(16,874.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 297.

JOSEPH BRADFIELD, APPELLANT,

vs.

ELLIS H. ROBERTS, TREASURER OF THE UNITED STATES.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 28, 1898.

1 In the Court of Appeals of the District of Columbia.

ELLIS H. ROBERTS, Treasurer of the United States, Appellant, *vs.* JOSEPH BRADFIELD. } No. 782.

Supreme Court of the District of Columbia.

JOSEPH BRADFIELD *vs.* ELLIS H. ROBERTS, Treasurer of the United States. } No. 18822. In Equity.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Filed November 17, 1897. J. R. Young, Clerk.

JOSEPH BRADFIELD *against* ELLIS H. ROBERTS, Treasurer of the United States. } In Equity. No. 18822, Doc. 43.

The complainant, Joseph Bradfield, represents and complains as follows:

1. That he is a citizen and tax-payer of the United States and a resident of the District of Columbia, of lawful age, and that he brings this suit in his own right and in the interest of himself and all other citizens of the United States similarly situated.

2 That the defendant, Ellis H. Roberts, is a citizen of the United States, and a resident of the District of Columbia, and is sued as the Treasurer of the United States, duly appointed under and by virtue of an act of Congress entitled "An act to establish a Treasury Department," approved September 2, 1789, and the acts in addition thereto.

3. That the object of this suit is to procure an order of this court enjoining and restraining the said defendant from paying or delivering to any officer or agent of Providence hospital or the directors of Providence hospital of the city of Washington, District of Columbia, or to any person whatever for the use and benefit of the

2 same, any money or monies belonging to the United States or to the District of Columbia, upon and by virtue of an agreement or contract between the Surgeon General of the Army and the directors of said hospital or their agents, under color of an authority to provide "for the support and medical treatment of

ninety-five medical and surgical patients, who are destitute, in the city of Washington, under a contract to be made with the Surgeon General of the Army," contained in the sundry civil act approved June 4, 1897, or by virtue of the agreement between the Commissioners of the District of Columbia and the directors of said hospital, made and entered into the 16th day of August, 1897, a copy of which is herewith filed as a part of this bill and marked "Exhibit A," wherein it is provided "that they (the said Commissioners) will erect on the grounds of said hospital an isolating building or ward for the treatment of minor contagious diseases, said building or ward to be erected without expense to said hospital except such as it may elect, but to be paid for out of an appropriation for that purpose contained in the District appropriation bill approved March 3, 1897, on plans to be furnished by said Commissioners and approved by the health officer of the District of Columbia, and that when the said building or ward is fully completed it shall be turned over to the officers of Providence hospital."

4. That the said Providence hospital is a private eleemosynary corporation, and that to the best of complainant's knowledge and belief it is composed of members of a monastic order or sisterhood of the Roman Catholic church and is conducted under the auspices of said church; that the title to its property is vested in the "Sisters of Charity of Emmitsburg, Maryland;" that it was incorporated by a special act of Congress approved April 8, 1864, whereby, in addition to the usual powers of bodies corporate and politic, it was invested specially with "full power and all the rights of opening and keeping a hospital in the city of Washington for the care of such sick and invalid persons as may place themselves under the treatment and care of said corporation."

5. That in view of the sectarian character of said Providence hospital and the specific and limited object of its creation, the said contract between the same and the Surgeon General of the Army and also the said agreement between the same and the Commissioners of the District of Columbia are unauthorized by law and, moreover, involve a principle and a precedent for the appropriation of the funds of the United States for the use and support of religious societies, contrary to the article of the Constitution which declares that Congress shall make no law respecting a religious establishment, and also a precedent for giving to religious societies a legal agency in carrying into effect a public and civil duty which would, if once established, speedily obliterate the essential distinction between civil and religious functions.

6. That the complainant and all other citizens and tax-payers of the United States are injured by reason of the said contract and the said agreement, in virtue whereof the public funds are being used and pledged for the advancement and support of a private
3 and sectarian corporation, and that they will suffer irreparable damage if the same are allowed to be carried into full effect by means of payments made through or by the said defendant out of the Treasury of the United States, contrary to the Constitution and declared policy of the Government.

7. Wherefore, and forasmuch as he is without remedy at law and can have adequate relief only in a court of equity, where such matters are properly cognizable and relievable, the complainant prays:

Prayers.

1. That the United States writ of subpœna may issue from this honorable court, directed to the said defendant, Ellis H. Roberts, Treasurer of the United States, commanding him to be and appear in this court, on a day certain to be named therein, to answer the exigencies of the foregoing bill of complaint, and to abide the judgment and decree of the court in the premises.

2. That the said Ellis H. Roberts, Treasurer of the United States, as aforesaid, his agents and assistants and his and their successors in office, be enjoined and restrained by the order of this honorable court from paying or delivering any money or monies of the United States or of the District of Columbia to the said directors of Providence hospital, their agents, attorneys, employés, or servants, as if there were no contract between the Surgeon General of the Army and said corporation or between the Commissioners of the District of Columbia and the same, any warrant drawn by the Secretary of the Treasury, or any precedent, or any pretended authority of an act of Congress in any way relating to or concerning the said corporation, its property or business, to the contrary notwithstanding.

3. That the complainant may have such other and further relief in the premises as the nature of the case may require.

The defendant to this bill of complaint is Ellis H. Roberts, Treasurer of the United States.

JOSEPH BRADFIELD.

Verification.

I do solemnly swear that I have read the bill by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

JOSEPH BRADFIELD.

Subscribed and sworn to before me this 17 day of November, A. D. 1897.

J. R. YOUNG, *Clerk*,
By L. P. WILLIAMS, *Ass't Clerk*.

I do solemnly swear that because of my poverty I am unable to pay the costs of this suit which I am now about to commence or to give security for the same, and that I believe I am entitled to the redress I seek, which is an injunction against the Treasurer
4 of the United States forbidding him from disbursing any money belonging to the United States to Providence hospital, its agents or attorneys, on the ground that said hospital is a sectarian institution.

JOSEPH BRADFIELD.

Subscribed and sworn to before me this 17th day of November, 1897.

J. R. YOUNG, *Clerk*,
By L. P. WILLIAMS, *Ass't Clerk*.

EXHIBIT "A."

Agreement.

Articles of agreement entered into this sixteenth day of August, in the year of our Lord one thousand eight hundred and ninety-seven, by and between the Commissioners of the District of Columbia and the directors of Providence hospital, a body corporate in said District, whereby it is agreed on the part of the Commissioners of the District of Columbia—

That they will erect on the grounds of said hospital an isolating building or ward for the treatment of minor contagious diseases, said building or ward to be erected without expense to said hospital, except such as it may elect, but to be paid out of an appropriation for that purpose contained in the District appropriation bill approved March 3, 1897, on plans to be furnished by the said Commissioners, and approved by the health officer of the District of Columbia and that when the said building or ward is fully completed it shall be turned over to the officers of Providence hospital, subject to the following provisions:

First. That two-thirds of the entire capacity of said isolating building or ward shall be reserved for the use of such poor patients as shall be sent there by the Commissioners of the District from time to time through the proper officers. For each such patient said Commissioners and their successors in office are to pay at the rate of two hundred and fifty dollars ($250) per annum, for such a time as such patient may be in the hospital, subject to annual appropriations by Congress.

Second. That persons able to pay for treatment may make such arrangements for entering the said building or ward as shall be determined by those in charge -hereof, and such persons will pay the said Providence hospital reasonable compensation for such treatment, to be fixed by the hospital authorities, but such persons shall have the privilege of selecting their own physicians and nurses, and in case physicians and nurses are selected other than those assigned by the hospital, it shall be at the expense of the patient making the request.

And said Providence hospital agrees to always maintain a neutral zone of forty (40) feet around said isolating building or ward and grounds connected therewith to which patients of said ward have access.

5 As witness the signatures and seals of John W. Ross, John B. Wight, and Edward Burr, acting, Commissioners of the District of Columbia, and the corporate seal of the said The Direc-

tors of Providence Hospital and the signature of president thereof, this sixteenth day of August, A. D. 1897.

(Signed) JOHN W. ROSS, [SEAL.]
(Signed) JOHN B. WIGHT, [SEAL.]
(Signed) EDW. BURR, *Acting*, [SEAL.]
Commissioners of the District of Columbia.

Witness as to the Commissioners:
WILLIAM TINDALL.

(Signed) SISTER BEATRICE, [SEAL.]
President Providence Hospital.

Witness as to Sister Beatrice:
W. C. WOODWARD.

Filed November 26, 1897. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

JOSEPH BRADFIELD, Complainant,
vs.
ELLIS H. ROBERTS, Defendant. } Equity. No. 18822.

Demurrer of the Defendant to the Bill of Complaint in the Above-entitled Cause.

The defendant, Ellis H. Roberts, by protestation, not answering or acknowledging the matters and things in the bill of complaint or any of them to be true as therein stated, demurs to the said bill and for cause of demurrer says:

1.

The complainant has not in and by his said bill shown in himself any right or title to maintain the same.

2.

The said complainant has not in and by his said bill made or stated such a case as does or ought to entitled him, as against the defendant, to the relief thereby prayed or any relief in the premises.

Wherefore the defendant demurs to the said bill and prays the judgment of the court whether he ought to make any other or further answer thereto.

ELLIS H. ROBERTS.

HENRY E. DAVIS,
D. W. BAKER,
Solicitors for the Defendant.

6 DISTRICT OF COLUMBIA, *ss:*

Before me, a notary public in and for the District of Columbia, personally appeared Ellis H. Roberts, who, being duly sworn, deposes and says the foregoing demurrer is not interposed for delay.

ELLIS H. ROBERTS.

Subscribed and sworn to before me this 24th day of November, A. D. 1897.

HIRAM W. BARRETT,
Notary Public.

[SEAL.]

I hereby certify that in my opinion the foregoing demurrer is well founded in law.

HENRY E. DAVIS,
Solicitor for Defendant.

Filed December 11, 1897. J. R. Young, Clerk.

JOSEPH BRADFIELD, Complainant,
vs.
ELLIS H. ROBERTS, Treasurer of the United States. } No. 18822. In Equity.

The complainant says that the said bill of complaint and the matters therein contained, in manner and form as the same are in his said bill of complaint set forth, are sufficient in law for him, the complainant, to have and maintain his aforesaid action against him, the said defendant, and the said complainant joins issue upon the said defendant's demurrer.

JOSEPH BRADFIELD, *P. P.*

Filed February 3, 1898. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

JOSEPH BRADFIELD
v.
ELLIS H. ROBERTS, Treasurer of the United States. } Equity. No. 18822.

This cause came on for hearing upon the bill and demurrer and was argued by the respective counsel and considered by the court. It is thereupon, this 3d day of February, 1898, by this court and the authority thereof, adjudged, ordered, and decreed that the defendant or Treasurer of the United States be, and he is hereby, enjoined and strictly forbidden to pay over any monies of the United States or of the District of Columbia to the Providence hospital, or to the directors or to any officer or agent thereof, by virtue of or under any claim that may be made for such payment under the agreement made by the Commissioners of the District of Columbia and the president of said hospital, set forth and described in the proceedings in this cause, dated 16 August, 1897.

A. B. HAGNER,
Associate Justice.

7 Filed February 4, 1898. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

JOSEPH BRADFIELD
vs.
ELLIS H. ROBERTS, Treasurer of the United States. } Equity. No. 18822.

The clerk of said court will note an appeal to the Court of Appeals of the District of Columbia on behalf of the respondent, Ellis H. Roberts, Treasurer of the United States, from the decree in the above-entitled cause, and will issue citation.

HENRY E. DAVIS,
Attorney of the United States in and for the District of Columbia, Attorney for Appellant.

Memorandum.

Febr'y 9, 1898.—Appeal bond filed.

In the Supreme Court of the District of Columbia.

JOSEPH BRADFIELD
vs.
ELLIS H. ROBERTS, Treasurer of the United States. } No. 18822. In Equity.

The President of the United States to Joseph Bradfield, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal filed in the supreme court of the District of Columbia on the 4th day of February, 1898, wherein Ellis H. Roberts, Treasurer of the United States, is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 8th day of February, in the year of our Lord one thousand eight hundred and ninety-eight.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 11th day of February, 1898.

JOSEPH BRADFIELD, *Appellee.*

8 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify that the foregoing pages, numbered

from 1 to 12, inclusive, are true copies of originals in cause No. 18822, in equity, wherein Joseph Bradfield is complainant and Ellis H. Roberts, Treasurer of the United States, is respondent, as the same remains upon the files and records of said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 14 day of February, A. D. 1898.

JOHN R. YOUNG, *Clerk*.

Endorsed on cover: District of Columbia supreme court. No. 782. Ellis H. Roberts, Treasurer of the United States, appellant, *vs.* Joseph Bradfield.

9 TUESDAY, *March 8th, A. D.* 1898.

ELLIS H. ROBERTS, Treasurer of the United States, Appellant, *vs.* JOSEPH BRADFIELD. } No. 782.

The argument in the above-entitled cause was commenced by Mr. D. W. Baker, attorney for the appellant, and was continued by Mr. Joseph Bradfield *in propria persona*, and by Mr. L. A. Bailey, attorney for the appellee, and was concluded by Mr. Henry E. Davis, attorney for the appellant.

10 ELLIS H. ROBERTS, Treasurer of the United States, Appellant, *vs.* JOSEPH BRADFIELD. } No. 782.

Opinion.

Mr. Justice SHEPARD delivered the opinion of the court:

This is an appeal by the treasurer of the United States from a decree enjoining him from paying any money of the United States or the District of Columbia to the Providence hospital under a contract made therewith by the Commissioners of the District of Columbia.

The bill was filed by Joseph Bradfield, a citizen of the United States and a resident of the District of Columbia, "in the interest of himself and all other citizens of the United States similarly situated."

The contract, payments under which are sought to be enjoined, is made an exhibit to the bill, and reads as follows:

"Articles of agreement entered into this sixteenth day of August, in the year of our Lord, one thousand eight hundred and ninety-seven, by and between the Commissioners of the District of Columbia and the directors of Providence hospital, a body corporate in said District, whereby it is agreed on the part of the Commissioners of the District of Columbia—

That they will erect on the grounds of said hospital an isolating building or ward for the treatment of minor contagious diseases, said building or ward to be erected without expense to said hospital, except such as it may elect, but to be paid out of an appropriation for that purpose contained in the District appropriation bill, approved March 3, 1897, on plans to be furnished by the said Commissioners, and approved by the health officer of the District of Columbia, and that when the said building or ward is fully completed, it shall be turned over to the officers of Providence hospital, subject to the following provisions:

First. That two-thirds of the entire capacity of said isolating building or ward shall be reserved for the use of such poor patients as shall be sent there by the Commissioners of the District from time to time through the proper officers. For each such patient, said Commissioners and their successors in office are to pay at the rate of two hundred and fifty dollars ($250) per annum, for such a time as such patient may be in the hospital, subject to annual appropriations by Congress.

Second. That persons able to pay for treatment may make such arrangements for entering the said building or ward as shall be determined by those in charge thereof, and such persons will pay to said Providence hospital reasonable compensation for such treatment, to be fixed by the hospital authorities, but such persons shall have the privilege of selecting their own physicians and nurses, and in case physicians and nurses are selected other than those assigned by the hospital, it shall be at the expense of the patient making the request.

And said Providence hospital agrees to always maintain a neutral zone of forty (40) feet around said isolating building or ward and grounds connected therewith to which patients of said ward have access.

As witness the signatures and seals of John W. Ross, John B. Wight, and Edward Burr, acting, Commissioners of the District of Columbia, and the corporate seal of the said the directors of Providence hospital and the signature of president thereof, this sixteenth day of August, A. D. 1897.

(Signed) JOHN W. ROSS, [SEAL.]
(Signed) JOHN B. WIGHT, [SEAL.]
(Signed) EDW. BURR, *Acting*, [SEAL.]
Commissioners of the District of Columbia.

Witness as to the Commissioners:
WILLIAM TINDALL.

(Signed) SISTER BEATRICE, [SEAL.]
President Providence Hospital.

Witness as to Sister Beatrice:
W. C. WOODWARD."

Having set out the contract, the grounds of the relief prayed for are thus alleged in the bill:

"4. That the said Providence hospital is a private eleemosynary

corporation, and that to the best of complainant's knowledge and belief it is composed of members of a monastic order or sisterhood of the Roman Catholic church and is conducted under the auspices of said church; that the title to its property is vested in the 'Sisters of Charity of Emmitsburg, Maryland;' that it was incorporated by a special act of Congress approved April 8, 1864, whereby, in addition to the usual powers of bodies corporate and politic, it was invested specially with 'full power and all the rights of opening and keeping a hospital in the city of Washington for the care of such sick and invalid persons as may place themselves under the treatment and care of said corporation.'"

"5. That in view of the sectarian character of said Providence hospital and the specific and limited object of its creation, the said contract between the same and the Surgeon General of the Army and also the said agreement between the same and the Commissioners of the District of Columbia are unauthorized by law and, moreover, involve a principle and a precedent for the appropriation of the funds of the United States for the use and support of religious societies contrary to the article of the Constitution, which declares that Congress shall make no law respecting a religious establishment, and also a precedent giving to religious societies a legal agency in carrying into effect a public and civil duty which would, if once established, speedily obliterate the essential distinction between civil and religious functions.

"6. That the complainant and all other citizens and tax-payers of the United States are injured by reason of the said contract and the said agreement, in virtue whereof the public funds are being used and pledged for the advancement and support of a private and sectarian corporation, and that they will suffer irreparable damage if the same are allowed to be carried into full effect by means of payments made through or by the said defendant out of the Treasury of the United States, contrary to the Constitution and declared policy of the Government."

The defendant demurred generally to the bill, and the case was submitted thereon, resulting in the grant of the injunction as prayed.

1. The record does not show that objection was made to the bill for the want of necessary parties defendant; and neither that question, nor the right of the complainant to maintain the suit as a tax-payer of the District of Columbia, are noticed in the opinion of the learned justice who presided below.

The Treasurer of the United States, who alone was made a party, has no interest whatever in the controversy.

He is an officer of the United States, having custody among other money, of that raised by taxation in the District of Columbia, and is charged with the ministerial duty of paying out the same upon claims and requisitions duly certified to him by the proper officers under the necessary appropriations made by Congress.

It is under this view of his duty in the premises, alone,
11 that his action in any matter could be compelled by mandamus or restrained by injunction. Noble *vs.* Union River Logging R. R., 147 U. S., 165, 172.

The persons directly interested in defending this suit are the parties to the contract which the plaintiff seeks to annul. They are the Commissioners of the District, on the one hand, who have acted in the performance of a duty imposed by law; and the Providence hospital, on the other, which has promised a consideration valuable in law.

Had objection been made on account of their non-joinder the trial court would, no doubt, have ordered the plaintiff to make them parties defendant, under the penalty of dismissal of his bill.

The defect being palpable and having been pressed upon our attention on the argument, we have no doubt of our power—indeed, it is questionable if it is not our duty—to reverse the decree because of the omission of the plaintiff to bring into the controversy the parties aforesaid who are directly and substantially interested in its result. California *v.* Southern Pacific Co., 157 U. S., 229, 255; N. O. Water Works Co. *v.* New Orleans, 164 U. S., 471, 480.

In view, however, of the failure to call attention to this defect of parties on the hearing below, and of our opinion that the bill should have been dismissed for want of merit, we have concluded to treat the case as if all the interested parties were sufficiently represented by the appellant, and thus speed the final settlement of the question, which is one affecting important public interests.

2. The right of a court of equity to take jurisdiction over the case made by the bill was necessarily raised by the demurrer. In making the contract that is the occasion of the controversy, the District Commissioners acted as the governing officers and representatives of the District of Columbia, in its capacity of a municipal corporation. Had it and its representatives been made parties to the bill as the real defendants against whom relief is sought, the question would have been freed from much doubt. In a case in the Supreme Court of the United States, where similar relief was asked against the unlawful acts of the authorities of a municipal corporation of the State of New Jersey it was said by Mr. Justice Field, who delivered the opinion of the court, that:

"Of the right of resident tax-payers to invoke the interposition of a court of equity to prevent an illegal disposition of the moneys of the county or the illegal creation of a debt which they, in common with other property-holders of the county, may otherwise be compelled to pay, there is at this day no serious question. The right has been recognized by the State courts in numerous cases; and from the nature of the powers exercised by municipal corporations, the great danger of their abuse and the necessity of prompt action to prevent irremediable injuries, it would seem eminently proper for courts to interfere upon application of the tax-payers of a county to the consummation of a wrong, when the officers of these corporations assume, in the excess of their powers, to create burdens upon property-holders certainly, in the absence of legislation restricting the right to interfere in such cases to public officers of the State or county, there would seem to be no substantial reason why a bill by or on behalf of individual tax-payers should not be entertained to prevent the misuse of corporate powers. The courts may be safely intrusted

to prevent the abuse of their process in such cases." Crampton *v.* Zabriskie, 101 U. S., 601, 609; see also Brown *v.* Tronsdale, 138 U. S., 389, 394; Colvin *v.* Jacksonville, 158 U. S., 456; Ogden City *v.* Armstrong, 168 U. S., 224, 236.

Having declined to dismiss the bill for the failure to make the District of Columbia, or the Commissioners thereof, parties defendant, we are constrained to regard the bill, in passing on the point, as if in reality directed against the District of Columbia, to prevent a damage irremediable at law. In other words, accepting the sufficiency of the allegation of irreparable damage, which is admitted by the demurrer, we will regard the bill as directed against Ellis H. Roberts, not as the Treasurer and representative of the United States, but as, *ex officio*, the representative treasurer, so to speak, of the District of Columbia, and as such charged by law with the duty of paying out the money thereof under the contract made with its representatives.

3. The authority for the contract in this case is found in the general appropriation act for the expenses of the District of Columbia, approved March 3, 1897. Under the general head of the "Health department," is found the following clause: "For two isolating buildings, to be constructed, in the discretion of the Commissioners of the District of Columbia, on the grounds of two hospitals and to be operated as a part of such hospitals—thirty thousand dollars." 29 Stat., p. 679.

It is a matter of common knowledge that there is no hospital in the District for the isolation and proper care of persons suffering from even the "minor contagious diseases," so called in the contract aforesaid; and that all attempts heretofore made to meet the imperative demand therefor, through the erection of a suitable building by the District itself, have been thwarted by the opposition of residents and property-owners who feared injury to person and property from its location in their neighborhood.

This accounts for the aforesaid clause of the act and the discretion thereby conferred upon the Commissioners. In the exercise of that discretion they made the contract with the Providence hospital.

As we have seen in the statement of the case, the complainant's bill alleges: "That the said Providence hospital is a private eleemosynary corporation, and that to the best of complainant's knowledge and belief, it is composed of members of a monastic order or sisterhood of the Roman Catholic church and is conducted under the auspices of said church; that the title to its property is vested in the Sisters of Charity of Emmitsburgh, Maryland; that it was incorporated by a special act of Congress, approved April 8, 1864."

The aforesaid act of incorporation is a public act, and for a complete understanding of the case is here given in full:

"Chap. 1. An act to incorporate Providence hospital of the city of Washington, District of Columbia.

12 "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Lucy Gwynn, Teresa Angela Costello, Sarah McDonald, Mary E. Spalding and Mary Carroll, and their successors in office, are hereby made, declared and constituted a corporation and body politic, in law

and in fact, under the name and style of the Directors of Providence Hospital, and by that name they shall be and are hereby made capable in law to sue and be sued, to plead and be impleaded, in any court within the county of Washington, in the District of Columbia; to have and use a common seal, and to alter or amend the same at pleasure; to have, purchase, receive, possess and enjoy any estate in lands, tenements, annuities, goods, chattels, moneys or effects, and to grant, devise or dispose of the same in such manner as they may deem most for the interest of the hospital; Provided, that the real estate held by said corporation shall not exceed in value the sum of one hundred and fifty thousand dollars.

"SEC. 2. And be it further enacted, That the said corporation and body politic shall have full power to appoint from their own body a president and such other officers as they may deem necessary for the purposes of their creation; and in case of the death, resignation or refusal to serve of any of their number, the remaining members shall elect and appoint other persons in lieu of those whose places may have been vacated; and the said corporation shall have full power and all the rights of opening and keeping a hospital in the city of Washington for the care of such sick and invalid persons as may place themselves under the treatment and care of the said corporation.

"SEC. 3. And be it further enacted, That the said corporation shall also have and enjoy full power and authority to make such by-laws, rules and regulations as may be necessary for the general accomplishment of the objects of said hospital: Provided, that they be not inconsistent with the laws in force in the District of Columbia: And provided further, that this act shall be liable to be amended, altered or repealed at the pleasure of Congress." Approved April 8, 1864; 13 Stat., 43.

Founded on the allegations aforesaid, the contention is that the provision of the law, as given effect by the commissioners in Contracting to pay money thereby appropriated to the above-named corporation, is in violation of that part of the first amendment of the Constitution, which provides that: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

We do not understand it to be denied that Congress, in legislating for the District of Columbia, possesses the combined powers of the General Government and that of a State; nor that appropriations of money for the necessary care of the public health and the maintenance of proper public charities, are within those powers.

It seems to have been the practice of Congress for many years to provide, in part at least, for the care of the sick, and other objects of charity, through appropriations of money to private institutions and associations, in consideration of actual services in these regards, or upon special contracts therefor.

This practice seems, also, to have prevailed unquestioned in respect of the power, though not always as regards its policy or expediency. And we do not understand the complainant as denying the power to authorize contracts of this nature made with private

persons, or with associations of persons, not sectarian, or under the control of an organized church. It is expressly admitted in the opinion of the learned justice who rendered the decree appealed from.

He found nothing on the face of the provision of the appropriation act in conflict with the Constitution, but based his objection entirely upon the manner in which the Commissioners exercised the power conferred through the contract made with Providence hospital, by reason of the character of its alleged ownership and control.

The contention, then, goes no further than that, under the conditions mentioned, which are alleged to prevail in the case of Providence hospital, the contract for the payment of money, for services rendered, becomes a grant by law in aid of an establishment of religion, and is therefore within the prohibition of the first amendment.

Conceding the power of Congress to appropriate money for a given purpose, and to contract for the execution of that purpose, with a natural person, or an association of persons, not subject to the authority and control of an organized church, it is clear that no court would undertake, in such case, to inquire into the religious beliefs of the single individual, or of the natural persons composing the association or corporation; for such an inquiry, or a law requiring it, would be an interference with the free exercise of religion.

As shown in the incorporation act above set forth, Providence hospital is a formal, private corporation, of unlimited duration, subject only to the power of Congress to amend and repeal. Its incorporators are natural persons, whose remaining members are vested with the power to fill vacancies as they shall occur. Power is conferred to establish and conduct a hospital, to have a corporate seal, to contract and to sue and be sued in its corporate name, and to receive and hold real estate and other property for the purposes of its creation.

It is not declared the trustee of any church or religious society. Its property is to be acquired in its own name and for its own purposes; that property and its business are to be managed in its own way, subject to no visitation, supervision or control by any ecclesiastical authority whatever, but only to that of the government which created it. In respect, then, of its creation, organization, management and ownership of property, it is an ordinary private corporation, whose rights are determinable by the law of the land, and the religious opinions of whose members are not subjects of inquiry. Watson *v.* Jones, 13 Wall., 679, 724, 725; Robertson *v.* Bullions, 11 N. Y., 243, 251; Keyser *v.* Stansifer, 6 Ohio, 363; Warner *v.* Bowdoin Square Bap. Ch., 148 Mass., 400, 404.

Notwithstanding other inconsistent allegations of the complainant's belief in respect of the real ownership and control of Providence hospital, this case, in accordance with the fore-
13 going views, might be ended here in a reversal of the decree. But construing the bill most favorably to the complainant,

and assuming it to be true, as he alleges he believes it to be, that the corporation called Providence hospital is "composed of members of a monastic order or sisterhood of the Roman Catholic church, and is conducted under the auspices of said church; that the title to the property is vested in the Sisters of Charity of Emmitsburg, Maryland," and that it is in fact a "religious establishment," we are, nevertheless, of the opinion that the injunction cannot be sustained.

The authorities relied upon as directly supporting the opposite view are two messages of President Madison to the Congress of the United States. In the first of these, February 21, 1811, he vetoed an "Act incorporating the Protestant Episcopal church in the town of Alexandria, in the District of Columbia."

The reasons given for refusing to approve the act are thus stated: "The bill exceeds the rightful authority to which governments are limited by the essential distinctions between civil and religious functions, and violates in particular the article of the Constitution of the United States which declares that 'Congress shall make no law respecting a religious establishment.' * * * This particular church, therefore, would so far be a religious establishment by law, a legal force and sanction being given to certain articles in its constitution and administration." The concluding paragraph of this message touches the very question presented here, upon the assumption that Providence hospital is a religious establishment: "Because the bill vests in the said incorporated church an authority to provide for the support of the poor and education of poor children of the same, an authority which, being altogether superfluous if the provision is to be the result of pious charity, would be a precedent for giving to religious societies as such a legal agency in carrying into effect a public and civil duty." Messages of the Presidents, Richardson, vol. 1, pp. 489, 490.

A few days later he vetoed an act for the relief of certain persons "and the Baptist church at Salem Meeting House, in the Mississippi Territory;" "Because the bill in reserving a certain parcel of land of the United States for the use of said Baptist church comprises a principle and precedent for the appropriation of funds of the United States for the use and support of religous societies, contrary to the article of the Constitution which declares that 'Congress shall make no law respecting a religious establishment.'" *Idem*, p. 490.

This second veto message is based on an objection, namely, a gift of lands to a religious establishment, that does not exist in this case at all, and therefore is not relevant to the question as presented here.

It seems strange, however, that, in both messages President Madison should have made the mistake of quoting the words of the amendment as prohibiting laws "respecting a religious establishment," instead of "respecting an establishment of religion."

In the light of previous English and colonial history, and of the circumstances which led directly to the adoption of the amendment, we venture to suggest that "establishment of religion," as used therein, can hardly be regarded as altogether synonymous with "religious establishment."

The history of the origin of the first amendment is given by Chief Justice Waite, in the case of Reynolds *v.* United States, 98 U. S., 145, 162, 164. He quotes from a letter of Mr. Jefferson, written just after its adoption, as follows:

"Believing with you that religion is a matter which lies solely between man and his God; that he owes account to none other for his faith or his worship; that the legislative powers of the Government reach actions only and not opinions—I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establisment of religion or prohibiting the free exercise thereof,' thus building a wall of separation between church and State. Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore man to all his natural rights, convinced he has no natural right in opposition to his social duties." The Chief Justice then adds: "Coming as this does from an acknowledged leader of the advocates of the measure, it may be accepted almost as an authoritative declaration of the scope and effect of the amendment thus secured."

Without assuming to express an opinion of the real scope of the prohibitory words, we suggest that it seems to be the opinion of learned commentators of very high authority, that the declaration was intended to secure nothing more than complete religious liberty to all persons, and the absolute separation of the church from the State, by the prohibition of any preference, by law, in favor of any one religious persuasion or mode of worship. Cooley Const. Lim. (6th ed), 575; 2 Story Const., sec. 1871 *et seq.;* 2 Kent's Com., 34, 35; Rawle Constitution, 121 *et seq.;* see also, Trustees First Meth. Ep. Ch. *v.* City of Atlanta, 76 Ga., 181, 196.

Within four years after the messages aforesaid, vetoing the act incorporating the Protestant Episcopal Church of Alexandria (then in the District of Columbia), a case came before the Supreme Court of the United States, wherein the members of the vestry of the same church sued the overseers of the poor to quiet the title to certain land belonging to the church, which the defendants claimed under certain forfeiture acts of the legislature of Virginia. Terrett *v.* Taylor, 9 Cranch, 43, 47, 49, 51. The legal establishment of the Episcopal church in Virginia ended with the Revolution; but a statute of 1776 confirmed and established its rights to its lands and other property.

The act of 1784, ch. 88, made the vestry of each parish a corporation with perpetual succession. This was repealed in 1786, ch. 12, but with a proviso saving the church propery and authorizing trustees to preserve it for the church uses. These property rights were further confirmed by act of 1788, ch. 47. The foregoing statutes were all repealed by act of 1798, ch. 9, "as inconsistent with the principles of the Constitution and of religious freedom." By act of 1801, ch. 5, the property of the church was declared to be in
14 the State, and vacant glebe lands were required to be sold by the overseers for the benefit of the poor of the parish. (This act was passed after the cession of the territory comprising

Alexandria to the United States as a part of the District of Columbia.)

The court held that the lands of the established church did not become the property of the State at the Revolution; that it was competent for the legislature to incorporate the church and confirm its title; and that this legislative grant was irrevocable.

Mr. Justice Story, who delivered the opinion of the court, said in discussing the incorporating act of 1776: "It is conceded on all sides that at the Revolution the Episcopal church no longer retained its character as an exclusive religious establishment. And there can be no doubt that it was competent to the people and to the legislature to deprive it of its superiority over other religious sects, and to withhold from it any support by public taxation. But, although it may be true that 'religion can be directed only by reason and conviction, not by force or violence,' and that 'all men are equally entitled to the free exercise of religion according to the dictates of conscience,' as the bill of rights of Virginia declares, yet it is difficult to perceive how it follows, as a consequence, that the legislature may not enact laws more effectually to enable all sects to accomplish the great objects of religion by giving them corporate rights for the management of their property, and the regulation of their temporal as well as spiritual concerns. Consistent with the constitution of Virginia the legislature could not create or continue a religious establishment which should have exclusive rights and prerogatives, or compel the citizens to worship under a stipulated form or discipline, or to pay taxes to those whose creed they could not conscientiously believe. But the free exercise of religion cannot be justly deemed to be restrained by aiding with equal attention the votaries of every sect to perform their own religious duties, or by establishing funds for the support of ministers, for public charities, for the endowment of churches, or for the sepulture of the dead. And that these purposes could be better secured and cherished by corporate powers cannot be doubted by any person who has attended to the difficulties which surround all voluntary associations."

Again, referring to the incorporation act of 1776, he said: "It is asserted by the legislature of Virginia, in 1798 and 1801, that this statute was inconsistent with the bill of rights and constitution of that State, and therefore void. Whatever weight such a declaration might properly have as the opinion of wise and learned men, as a declaration of what the law has been or is, it can have no decisive authority. It is, however, encountered by the opinion successively given by former legislatures from the earliest existence of the constitution itself, which were composed of men of the very first rank for talents and learning. And this opinion, too, is not only a contemporaneous exposition of the constitution, but has the additional weight that it was promulgated or acquiesced in by a great majority, if not the whole, of the framers of the constitution."

Notwithstanding the views expressed by President Madison, and which were sustained by Congress in acting upon his messages, subsequent Congresses continued to incorporate in the District of Columbia charitable, educational and religious societies, some of which

were under the control of different churches. In 1832 an act was passed and approved giving Columbian college lands of the value of $25,000; and in 1833 a similar grant was made to Georgetown college. (4 Stat., 603; 6 Stat., 538.) Both were then notoriously under church auspices: the former Baptist, the latter Roman Catholic. (For a statement of donations that have been made by Congress to charitable institutions under the direct control of different churches, see report of joint select committee to investigate the charities and reformatory institutions in the District of Columbia, made March 21, 1898.)

May 5, 1870, the general incorporation act of the District of Columbia was approved, and the second class of corporations authorized to be formed are "religious societies," to the government of which eleven sections are devoted. R. S. D. C., sec. 533 *et seq.* The validity of the incorporation of a church under this act was affirmed in the Supreme Court of the United States, though the question of the constitutionality of the statute itself was not raised or noticed. B. & P. R. Co. *v.* Fifth Baptist Church, 137 U. S., 568.

In the act of 1848, establishing the territorial government of Oregon, Congress expressly exercised the power denied by President Madison in the second message hereinabove referred to. A provision of this act granted the title to not more than 640 acres of land then occupied as missionary stations among the Indian tribes in that Territory, to "the several religious societies to which said missionary stations respectively belong" (9 Stat., 323). The power of Congress to make this donation to religious establishments passed unquestioned in two cases in the Supreme Court of the United States, wherein the priority of titles claimed thereunder was the subject of controversy. Missionary Society (Methodist Episcopal) *v.* Dalles, 107 U. S., 336, 339; Catholic Bishop of Nesqually *v.* Gibbon, 158 U. S., 155, 171. Referring to the character of the grant in this last case, Mr. Justice Brewer said: "That this was a donation instead of a grant of the right to purchase, is immaterial. The donation feature was inserted because of the benefits supposed to flow from the religious work of the mission, and proceeded upon the same principle that exempts from taxation the property of religious organizations."

In this connection, also, it may not be irrelevant to remark the uniform practice of Congress to provide chaplains for each House, at public expense, as well as chaplains in the Army and Navy.

The principle conserved by the first amendment is found, in one form or another, in the constitutions of the States of the Union; and yet the practice has been common in them all—unquestioned, so far as we are advised—to admit religious establishments, and societies for religious purposes, to incorporation both by special law and under general incorporation acts.

Considering the general terms of the amendment, the common practice of Congress and State legislatures for so many years, and the judicial decisions above cited, we could not, if the case turned upon the particular question, justify ourselves in holding that Congress has not the power to incorporate, within the

District of Columbia, a religious establishment, or an association or society under the express control of a church or sect.

If, then, such a corporation may be lawfully created, why may not Providence hospital, though, as alleged, owned and conducted by "a monastic order or sisterhood of the Roman Catholic church," contract with the duly authorized agents of the Government to receive, not a subsidy or a gift of money, but compensation for actual services to be rendered?

If the United States were engaged in war, would they be denied the power, no matter how advantageous or necessary it might be in some instances, to contract with religious societies or associations for hospital supplies, or for nursing their sick and wounded soldiers in their own or in private hospitals?

If a church or religious establishment were the lowest bidder on a proposition by the United States for the lease or sale of a building for any legitimate Government use or purpose, would the power be denied to authorize the lease or purchase because of the character of the ownership of the offered property?

In our opinion a law authorizing a contract to be made without discrimination or preference, or a contract made under general discretion reposed in authorized agents, for the rendition of actual services in nursing the sick or preventing contagion, with a corporation that may be under the control of a church, cannot be declared void as "a law," or an act authorized by law, "respecting an establishment of religion."

In Illinois, under a constitutional provision specially prohibiting appropriations of public money in aid of any church or sectarian institution whatsoever, it has been held that a school board could contract with a church for the lease of rooms in it to be occupied by a public school. Millard *v.* Board of Education, 121 Ill., 297.

As we have before remarked, all the States seem to have provisions in their constitutions of the same general purport as the first amendment to the Federal Constitution, which have not been regarded as interfering with the incorporation of churches or sectarian establishments. But many of them, also, contain special prohibitions of donations or grants of public money in aid of such establishments. So far as we can ascertain, there have been but few decisions interpreting these special provisions, in application to facts having any similarity to those of this case.

Notwithstanding we may have already consumed more time than necessary in the discussion of this case, we will review the decisions referred to as briefly as possible.

(1.) County of Cook *v.* Industrial School for Girls, 125 Ill., 540.

This was an action of assumpsit to recover the value of the board, tuition, and clothing of girls committed by order of court to the custody of the Industrial School. It appeared that the plaintiff was a corporation in name only, and that whilst commitments were to it by the judgments of the proper courts, the girls were in fact delivered to two institutions owned and controlled by the Roman Catholic church, called House of the Good Shepherd, and St. Joseph's orphan school. The girls were divided between these two, and the charges

for tuition and care were received by them. After holding that no services were performed by the plaintiff, the court discussed at length and denied the power of the legislature to appropriate money for services to be rendered by any church or sectarian denomination. Holding that the two schools aforesaid were sectarian, it was declared that the act under which the payment was claimed, entitled "An act to aid industrial schools for girls," was in violation of section 3, of article 8, of the constitution of Illinois. The effect of that section is thus stated in the opinion of the court: "The second clause of section 3, provides, that no grant or *donation* of land, money or other personal property shall ever be made to any church or for any sectarian purpose by the State, that is, the General Assembly, or any such public corporation, that is, any county, city, town, township or school district, etc. The first clause says that neither the State nor any such public corporation shall ever make any appropriation, or pay from any public fund whatever, anything in aid of any church or sectarian purpose. Evidently the second clause was intended to prohibit something different from the first clause. The second prohibits grants and donations; the first, grants and appropriations 'in aid.' If the appropriations and payments mentioned in the first clause mean simply 'donations' and nothing more, then it was surplusage to add the second clause to the section. Upon the plainest principles of construction, the first clause has reference to a different kind of aid from that to be derived from donations. Its language is comprehensive enough to embrace all appropriations and payments, whether based on a consideration or not."

In the course of the opinion the decision in Millard *v.* Board of Education, 121 Ill., 297 (cited above), is approved and its principle distinguished.

(2.) State of Nevada *v.* Hallock, 16 Nev., 373.

In this case a mandamus was refused to compel the State comptroller to audit an account in favor of the Nevada orphan asylum (a sectarian asylum and school), under the provisions of "An act to appropriate funds for the *relief* of the several orphan asylums of this State, approved March 3, 1881." The act was held to violate section 10 of the constitution of Nevada as amended, which declares that "No public funds of any kind or character whatever, State, county or municipal, shall be used for sectarian purposes." The State had asylums, it appears, of its own; and the court said, referring to the title of the act as showing the intent: "It cannot be doubted that the appropriation was intended to be a mere charity. * * * The seventy-five dollars appropriated for each orphan is a contribution only. Should it be given, it would be used for the relief and support of a sectarian institution, and in part, at least, for sectarian purposes. Should it be admitted that it would be used in part for legitimate purposes, still it is impossible to separate
16 the legitimate use from that which is forbidden." The asylum was a school, and daily religious instruction was given, but not forced, upon those of another faith. Daily religious services were held, which all were required to attend. Children of other

beliefs were not compelled to join in the prayers, but were required to kneel in silence.

(3.) Synod of Dakota *v.* State of South Dakota, 2 S. D., 366; S. C., 14, L. R. A., 418.

An act of the territorial legislature authorized payment to Pierre university—an institution under the control of the Presbyterian church—for the education of a certain number of scholars each year. The constitution of the State, subsequently adopted, contained a section very much like that of Illinois on the same subject, with this additional clause: "And no sectarian instruction shall be allowed in any school or institution aided or supported by the State." It was held that this section of the constitution abrogated the statute.

Bearing in mind the essential difference between the constitutional prohibition controlling the foregoing decisions, respectively, and that of the Federal Constitution, which governs here, we do not find any necessary antagonism between them and the conclusion at which we have arrived; on the contrary, inferences logically deducible therefrom would seem to support that conclusion.

In State *v.* Hallock, *supra*, the court, in giving the history of the amendment of the constitution, shows that it was the result of popular dissatisfaction with a general clause prohibiting sectarian instruction in schools maintained at public expense, and was apparently devised to meet the situation presented.

As we have seen, also, in the extract quoted above from the opinion in Cook Co. *v.* Industrial School, the court found that by reason of a special clause prohibiting appropriations in aid of any church or sectarian purpose, in addition to one prohibiting *donations* merely, the intention was to go farther and "embrace all appropriations or payments, whether based on a consideration or not."

4. Another point raised on the argument remains to be considered. Under the head of "Charities," in the same general appropriation act, large sums of money are set apart to many charitable institutions and societies, by name, that are under church supervision, control and ownership. The last item of such appropriations is followed by the following clause: "And it is hereby declared to be the policy of the Government of the United States to make no appropriation of money or property for the purpose of founding, maintaining or aiding, by payment for services, expenses or otherwise, any church or religious denomination or any institution or society which is under sectarian or ecclesiastical control; and it is hereby enacted that, from and after the thirtieth day of June, 1898, no money appropriated for charitable purposes in the District of Columbia shall be paid to any church or religious denomination, or to any institution or society which is under sectarian or ecclesiastical control." 29 Stat., 683.

We cannot agree with the learned justice who granted the injunction, that the foregoing declaration of a departure in public policy limits and controls the discretion of the District Commissioners in the matter of the contract under consideration. The act was approved March 3, 1897, and its appropriations are limited to the fiscal

year ending June 30, 1898. The new policy is expressly declared to take effect and be in force *from and after June* 30, 1898.

How then is it possible to hold that an act, the purpose of which will have been accomplished on June 30, 1898, to be restrained in its operation by a clause injected into it which does not come into existence and operation until *after* that date?

It is, indeed, difficult to conceive what effect this declaration or enactment can have in any event. Clearly it cannot affect appropriations of money that will be exhausted before it takes effect; and it cannot bind the succeeding Congress when it comes to enact an appropriation bill for the year beginning July 1, 1898. It seems to be nothing more than a mere declaration of an abstract view of public policy that was not permitted to affect the operation of the act of which it was made a part, and that cannot, for obvious reasons, control or limit expenditures under specific appropriations which may be similarly itemized and designated in the act of a succeeding Congress.

Payments under these special appropriations have not been embraced in this bill, and in referring to them, in considering the effect of the provision aforesaid which accompanies them, we are not to be understood as expressing an opinion in respect either of the power of Congress to grant money in aid of associations of persons engaged in works of public charity, whether under sectarian control or not, or of the policy of so doing if the power exists.

As regards the policy that should prevail in the matter of the support of charities in the District, or the wisdom of contracting for the erection of buildings for such purposes upon other than public property, these are matters for the exclusive determination of Congress and it would not be within our province even to intimate an opinion thereon.

The sole question for our determination is the power of Congress and the District Commissioners in the matter of the appropriation and contract involved in this case.

Finding no valid objection to that power as exercised, we must reverse the decree with costs, and remand the cause with direction to dismiss the bill. It is so ordered.

Reversed.

17 MONDAY, *April 4th, A. D.* 1898.

ELLIS H. ROBERTS, Treasurer of the United States, Appellant, *vs.* JOSEPH BRADFIELD. } No. 782, April Term, 1898.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia and was argued by counsel. On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said supreme court in this cause be, and the same is hereby, reversed with costs, and

that this cause be, and the same is hereby, remanded to the said supreme court with direction to dismiss the bill.

Per MR. JUSTICE SHEPARD.

April 4, 1898.

18 THURSDAY, *April 14th, A. D.* 1898.

ELLIS H. ROBERTS, Treasurer of the United States, Appellant,
vs.
JOSEPH BRADFIELD. } No. 782.

On motion of Mr. L. A. Bailey, attorney for the appellee in the above-entitled cause, it is ordered by the court that said appellee be allowed an appeal to the Supreme Court of the United States on giving bond in the sum of two hundred and fifty dollars.

19 Know all men by these presents that we, Joseph Bradfield, as principal, and The United States Fidelity and Guaranty Company, a body corporate incorporated under the laws of the State of Maryland, as surety, are held and firmly bound unto the United States of America in the full and just sum of two hundred and fifty dollars ($250), to be paid to the said The United States of America, its certain attorney or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this eighteenth day of April, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas lately, at a Court of Appeals of the District of Columbia, in a suit depending in said court between Ellis H. Roberts, Treasurer of the United States, appellant, and Joseph Bradfield, a decree was rendered against the said Joseph Bradfield, and the said Joseph Bradfield having prayed and been allowed an appeal to the Supreme Court of the United States to reverse the said decree in the aforesaid suit, and a citation directed to the said Ellis H. Roberts, Treasurer of the United States, having been issued, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said Joseph Bradfield shall prosecute his said appeal to effect and answer all costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in the presence of—the words "executors" and "administrators," in line 14, and the words "damages" and "and," in line 40, erased before signing—

[Seal of the United States Fidelity and Guaranty Company.]

JOSEPH BRADFIELD, [SEAL.]
THE UNITED STATES FIDELITY AND GUARANTY COMPANY, [SEAL.]
By J. S. SWORMSTEDT, *Attorney-in-fact.* [SEAL.]

Approved by—
R. H. ALVEY,
Chief Justice Ct. of App'ls D. C.

[Endorsed:] No. 782. Ellis H. Roberts, treas'r, &c., *vs.* Joseph Bradfield. Bond on appeal to Supreme Court U. S. Court of Appeals, District of Columbia. Filed Apr. 27, 1898. Robert Willett, clerk.

20 UNITED STATES OF AMERICA, *ss:*

To Ellis H. Roberts, Treasurer of the United States, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Joseph Bradfield is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richard H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this 27th day of April, in the year of our Lord one thousand eight hundred and ninety-eight.

R. H. ALVEY,
Chief Justice of the Court of Appeals of the District of Columbia.

Service accepted April 27, 1898.
HENRY E. DAVIS,
Attorney for Appellee.

[Endorsed:] Court of Appeals, District of Columbia. Filed Apr. 27, 1898. Robert Willett, clerk.

21 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 20, inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Ellis H. Roberts, Treasurer of the United States, appellant, *vs.* Joseph Bradfield, No. 782, April term, 1898, as the same remains upon the files and records of said Court of Appeals.

Seal Court of Appeals District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 6th day of May, A. D. 1898.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: Case No. 16,874. District of Columbia Court of Appeals. Term No., 297. Joseph Bradfield, appellant, *vs.* Ellis H. Roberts, Treasurer of the United States. Filed May 14th, 1898.

Supreme Court of the United States.

No. ~~661~~ 297, October Term, 1897. 8

JOSEPH BRADFIELD, Appellant, v. ELLIS H. ROBERTS, Treasurer of the United States.	Case No. 16,874.

Appellant's Brief.

I. STATEMENT OF THE CASE.

This is an appeal from a decree of the Court of Appeals of the District of Columbia, in Equity No. 782, reversing with costs the decree of the Supreme Court of the District of Columbia, in Equity No. 18822, enjoining the defendant, as Treasurer of the United States, from paying any moneys belonging to the United States or the District of Columbia, to the directors of Providence Hospital or to any person for their benefit, under an agreement, purporting to be a contract, between "Sister Beatrice" and the Commissioners of said District; and remanding the cause with direction to dismiss the bill.

The bill was filed, Nov. 17, 1897, by Joseph Bradfield, "a citizen and tax-payer of the United States, and a resident of the District of Columbia, in the interest of himself and all other citizens of the United States similarly situated," against "Ellis H. Roberts, Treasurer of the United States;" the grounds of action being stated therein as follows:

"3. That the object of this suit is to procure an order of this court enjoining and restraining the said defendant from paying or delivering to any officer or agent of Providence hospital or the directors of Providence hospital of the city of Washington, District of Columbia, or to any person whatever for the use and benefit of the same, any money or moneys belonging to the United States or to the District of Columbia, upon and by virtue of an agreement or contract between the Surgeon General of the Army and the directors of said hospital or their agents, under color of an authority to provide "for the support and medical treatment of ninety-five medical and surgical patients, who are destitute, in the city of Washington, under a contract to be made with the Surgeon General of the Army," contained in the sundry civil act approved June 4, 1897, or by virtue of the agreement between the Commissioners of the District of Columbia and the directors of said hospital, made and entered into the 16th day of August, 1897, a copy of which is herewith filed as a part of this bill and marked "Exhibit A," wherein it is provided "that they (the said Commissioners) will erect on the grounds of said hospital an isolating building or ward for the treatment of minor contagious diseases, said building or ward to be erected without expense to said hospital except such as it may elect, but to be paid for out of an appropriation for that purpose contained in the District appropriation bill approved March 3, 1897, on plans to be furnished by said Commissioners and approved by the health officer of the District of Columbia, and that when the said building or ward is fully completed it shall be turned over to the officers of Providence hospital."

"4. That the said Providence hospital is a private eleemosynary corporation, and that to the best of complainant's knowledge and belief it is composed of members of a monastic order or sisterhood of the Roman Catholic church and is conducted under the auspices of said church; that the title to its property is vested in the "Sisters of

Charity of Emmitsburg, Maryland;" that it was incorporated by a special act of Congress approved April 8, 1864, whereby, in addition to the usual powers of bodies corporate and politic, it was invested specially with "full power and all the rights of opening and keeping a hospital in the city of Washington for the care of such sick and invalid persons as may *place themselves* under the treatment and care of said corporation."

"5. That in view of the sectarian character of said Providence hospital and the specific and limited object of its creation, the said contract between the same and the Surgeon General of the Army and also the said *agreement* between the same and the Commissioners of the District of Columbia are unauthorized by law and, moreover, involve a principle and a precedent for the appropriation of the funds of the United States for the use and support of religious societies, contrary to the article of the Constitution which declares that Congress shall make no law respecting a religious establishment, and also a precedent for giving to religious societies a legal agency in carrying into effect a public and civil duty which would, if once established, speedily obliterate the essential distinction between civil and religious functions."

"6. That the complainant and all other citizens and taxpayers of the United States are injured by reason of the said contract and the said agreement, in virtue whereof the public funds are being used and pledged for the advancement and support of a private and sectarian corporation, and that they will suffer irreparable damage if the same are allowed to be carried into full effect by means of payments made through or by the said defendant out of the Treasury of the United States, contrary to the Constitution and declared policy of the Government."

The material part of the prayer was as follows:

"2. That the said Ellis H. Roberts, Treasurer of the

United States, as aforesaid, his agents and assistants and his and their successors in office, be enjoined and restrained by the order of this honorable court from paying or delivering any money or moneys of the United States or of the District of Columbia to the said directors of Providence hospital, their agents, attorneys, employees, or servants, as if there were no contract between the Surgeon General of the Army and said corporation or between the Commissioners of the District of Columbia and the same, any warrant drawn by the Secretary of the Treasury, or any precedent, or any pretended authority of an act of Congress in any way relating to or concerning the said corporation, its property or business, to the contrary notwithstanding."

"3. That the complainant may have such other and further relief in the premises as the nature of the case may require."

There was a general demurrer by the defendant, to which the plaintiff filed a joinder in demurrer; and the case was, by consent of parties set for trial on the 16th of December, 1897; at which time it was argued by the plaintiff in person and by defendant's counsel, Mr. Henry E. Davis and Mr. D. W. Baker.

On the 3d of February, 1898, Mr. Justice Hagner filed the following decree in the cause:

"This cause came on for hearing upon the bill and demurrer and was argued by the respective counsel and considered by the court.

It is thereupon, this 3d day of February, 1898, by this court and the authority thereof, adjudged, ordered, and decreed that the defendant, as Treasurer of the United States, be, and is hereby, enjoined and strictly forbidden to pay over any moneys of the United States or of the District of Columbia to the Providence hospital, or to the directors or to any officer or agent thereof, by virtue of or under any

claim that may be made for such payment under the *agreement* made by the Commissioners of the District of Columbia and the president of said hospital, set forth and described in the proceedings in this cause, dated 16 August, 1897."

From this decree the defendant appealed to the Court of Appeals of the District of Columbia, which by its decree, filed April 4, 1898, reversed the decree of the court below with costs, and remanded the cause with directions to dismiss the bill; whereupon the plaintiff, having been allowed an appeal to this court, for error assigns the following:

II. ASSIGNMENT OF ERRORS.

1. The Court of Appeals of the District of Columbia erred in assuming that the negative and self-executing provision of the Constitution of the United States, which provides that "Congress shall make no law respecting an establishment of religion," does not bind all the officers of the United States, including the defendant in this case, to refrain from paying or delivering to a corporation composed of Sisters of Charity, moneys in their possession belonging to the United States.

2. The Court erred in "regarding the bill as directed against Ellis H. Roberts, not as the Treasurer and representative of the United States, but as, *ex-officio*, the representative—treasurer, so to speak, of the District of Columbia, and, as such, charged by law with the duty of paying out the money thereof under the contract made with its representatives;" the defendant, Roberts, being "sued as the Treasurer of the United States," with reference to the disposition of moneys belonging to the United States as a public corporation composed of the people of the United States, as well as with reference to the disposition of moneys belonging to said District, which was created by an act of Congress, and is subject to the Constitution of the United States as the supreme law of the land.

3. The Court erred in assuming that the District of

Columbia, as a municipal corporation, so created and so bound, has the power to make contracts to bind itself, except *in pursuance* of appropriations made by law, or until such appropriations have actually been made.

4. The Court erred in assuming that this is merely a suit to annul a contract; it being in reality a suit to restrain the defendant, as treasurer of the United States, from violating his official oath and covenant in respect to the application of moneys of the United States and the District of Columbia to a private and sectarian corporation.

5. The Court erred in deciding that a private corporation composed of nuns, though that fact does not appear in its charter of incorporation, may contract with the agents of the Government to receive compensation for actual services *to be rendered*.

6. The Court erred in assuming that "Sister Beatrice," by that title or designation, could be made a party to this suit without a palpable violation of the Constitution of the United States in respect to titles of nobility; and that the paper writing signed: "Sister Beatrice, President of Providence Hospital," etc., which is set forth in the bill and also in the opinion of the Court, is a contract binding upon "The Directors of Providence Hospital," or upon the District of Columbia, under the Constitution and laws of the United States.

7. The Court erred in assuming that the promise of the District of Columbia to pay to a corporation of nuns, moneys to be appropriated by Congress *in futuro*, for services yet to be rendered, in keeping poor patients and prisoners held on the charge of having some "minor contagious disease," on the one hand; and the promise to maintain a "neutral zone" around the isolating building, or hospital-prison provided for, and to keep and nurse said poor patients and prisoners, on the other; constitute such a contract as to entitle the parties thereto to a standing in court

in this case; such a compact being a clear violation of law upon its face, and plainly an attempt to secure judicial recognition of an ecclesiastical title, as well as of the doctrine and right of asylum, as the same were established in the States of the Church.

8. The Court erred in failing to construe the mortmain clause of the Federal Constitution in the light of the English laws of mortmain and charitable uses, whose principles it embodies.

9. The Court erred in assuming that Congress has power to make gifts in mortmain, of lands, or houses to be built on lands, or money to be laid out in lands or improvements, with or without a *quid pro quo*, real or feigned; the prerogative right and power to grant licenses in mortmain, together with all the incidents of such a power, having been denied to Congress and reserved to the States by the First and Tenth Amendments to the Constitution.

10. The Court erred in assuming that Congress may do *per obliquum* what it has not the power to do *per directum*.

11. The Court erred in deciding that the interpretation of the Constitutional policy of the Government contained in the declaration of Congress set forth in the bill, and also in the opinion of the Court (Stat. p. 683) to wit: "It is hereby declared to be the policy of the United States, to make no appropriations of money or property, for the purpose of founding, maintaining, or aiding, *by payment for services*, expenses or otherwise, any church or religious denomination, or any institution or society which is under sectarian or ecclesiastical control,"—did not affect the acts of officers of the United States in respect to the application of moneys appropriated in the same act.

12. Finally, the Court erred in reversing the decree of the Supreme Court of the District of Columbia, and in remanding the cause with direction to dismiss the bill:

and also in refusing to restrain the defendant from delivering to Providence Hospital or its agents, the moneys appropriated to the said Hospital in the Sundry Civil Act of 1897; which it should have done upon the first opportunity, lest by judicial acquiescence in the usurpation of unauthorized and forbiddeu powers, by Congress and its agents, the wrong became inveterate by repitition.

III. PRINCIPLES AND AUTHORITIES.

The object in construing a constitution is to ascertain the meaning of its framers, and give affect to their intention In the clause under consideration, the thing predicated of Congress is a mandatory denial of the right to make any law respecting any establishment, of or concerning religion; and that denial is predicated universally—in its broadest possible sense, without any limitation or exception whatever. Every religious establishment or institution is included in the category with reference to which lawmaking is absolutely prohibited, and is excluded from that in respect to which Congress has been granted the power of legislation. *Ita lex scripta est.* The category of things prohibited is more comprehensive than similar categories in the State Constitutions. And while the subject has not heretofore been brought for direct adjudication before this Court, yet what Congress would be restrained from doing under the First Amendment can best be conjectured from a comparison of the numerous cases which have arisen under similar prohibitions in State Constitutions. The language of these Constitutions, though often much more explicit in forbidding aid to sectarian institutions, could not cover any more ground than the general words of the Federal Constitution. As the State courts have almost always been very strict in condemning any sort of State aid to a school or charity under the control of any religious sect, so also it seems likely that the Federal

courts, if occasion shall arise, will be strict in applying the prohibitions of the First Amendment.

State *v.* Hallock, 16 Nevada, 373.
Synod *v.* State, 2 South Dakota, 366.
Farmer *v.* St. Paul, 67 N. W. Rep., 990.
County of Cook *v.* Chicago Industrial School for Girls, 125 Ill., 540.
Cooley's Const. Lim., 54.
State *ex rel.* Orr *v.* New Orleans, La., An. Rep. for Feb. 1898.

The meaning of the framers of the Constitution of the Union is made equally clear by reference to their own writings and those of their contemporaries.

Opinion of John Adams, 7 Jefferson's Works, 396.
" " Jefferson, 8 id, 113, 136, 137.
" " Jefferson, 5 id, 236, 237.
" " Jefferson, 12 Hening's Statutes, 80.
" " Hamilton, 2 Hamilton's Works, 25, 26, 127
" " Madison, Veto Messages, 11, 12. [to 138.
" " Madison, Journal of Gen. Assembly, 1785.
" " John Jay, The Federalist, Nos. 3, 46, 47, 48.
" " Franklin, 2 Franklin's Works, 192, 193, 195, 202, 203.

The meaning of an idea or principle is its history. It can have no other. To conjecture without the light of experience is to deal in fiction and not in philosophy. Therefore, constitutions and statutes are to be construed in the light of previous history and surrounding circumstances.

Cooley's Const. Lim., 65.
Mattox *v.* U. S., 156 U. S. 237.
Dred Scott *v.* Sanford, 19 Howard, 394.
Kennedy *v.* Gies, 25 Mich., 83.
State *v.* Hallock, 16 Nevada, 373.

Hence the prior state of the law is to be considered as most likely to furnish the clue to the real meaning of an

ambiguous provision; and it is especially important to look into it if the Constitution is the successor of another, and *in the particular* in question essential changes have apparently been made.

Cooley's Const. Lim., 65.
The Federalist, No. 46.

The clause under consideration was intended to incorporate and fix in our jurisprudence the principles of the law of charitable uses, including the law of mortmain, as the chief guarantee of those primordial rights which the Anglo-Saxon race had inherited and defended since the times of Magna Charta. It is the principle of which those rights are consequences, and without which kingcraft and priestcraft would easily destroy them; it being absurd to hope for freedom of thought, or of speech, or of the press, or of assembly; if the clergy were allowed to influence legislation in their own special interest; or to accumulate and hold in perpetuity, either in their own right or as beneficiaries, such vast estates as might enable them to control the channels of information and the minds of the multitude. The clauses, securing those rights were, therefore grouped in one and the same sentence with the all-important principle that Congress shall neither create a religious establishment, nor recognize in any manner such as already existed. "No man shall be compelled to frequent or *support any religious worship, place or ministry whatsoever.*" This is the form in which Jefferson couched the principle in 1785; and Madison afterwards framed it in the words: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." This circumstance suggests the proper interpretation of the latter clause. All that the plaintiff contends for is, that no man shall be compelled by taxation to *support a religious place*, directly, and a religious worship and ministry, indirectly. It is conceded, by the demurrer, that the Hospital in

question is a corporation composed of members of a monastic order or sisterhood of the Roman Catholic Church, and is conducted under the auspices of said church; that the title to its property is vested in said order or sisterhood. It must therefore be a religious place, a religious establishment, a religious house, an institution under sectarian and ecclesiastical control. If the proposed building were erected, it would be the property of the sisterhood. The payment would be in aid of an institution or society which is under sectarian and ecclesiastical control, and no more flagrant and palpable violation of the Constitutional inhibition; no more glaring perversion of the act authorizing the erection of such a building in some proper place, could possibly be conjectured.

The Federal Government, like a municipal corporation, is possessed only of delegated powers; and while it has, as the immediate government of the District of Columbia and the Territories, ample powers delegated to it to provide for the foundlings, the insane, the indigent, infirm and helpless, and for the correction of the vicious and vagrant portions of its population, *such provision, where made, must be wholly under the control and supervision of its own officers and agents.* It can levy no taxes, general or special, upon *the inhabitants* or their property, unless the power be plainly and *unmistakably conferred.* The authority must be given either in express words, or by necessary implication; and *it cannot be collected by doubtful inferences from other powers,* or powers relating to other subjects, *nor deduced from any consideration of convenience or advantage.*

Congress cannot exercise the powers delegated to it, in such a way as to surrender or suspend the constitutional right of any citizen to exemption from taxation for purposes proscribed by the framers of the Constitution in that instrument. And it has been held in numerous cases, that a court of equity will interfere whenever unauthorized or forbidden legislation is sought to be made effective by a

ministerial act; and will in such a case enjoin the ministerial officer.

City of Valparaiso *v.* Gardner, 97 Ind., 1.
New London *v.* Brainard, 22 Conn., 552.
Webster *v.* Harwinton, 32 Conn., 131.
Crampton *v.* Zabriskie, 101 U. S., 661.
Cooley on Taxation, 548.
Baltimore *v.* Gill, 31 Md., 375.
Mormon Church Cases, 136 U. S., 1.
Calder *v.* Bruce, 3 Dallas, 386.

In the last named case, Mr. Justice Chase dwelt at some length upon the nature of the primordial rights and denied that any government could take the money of A and give it to B without any consideration, or for an unlawful consideration. Said he,

"The purposes for which men enter into society will determine the nature and terms of the social compact; and as they are the foundation of legislative power, they will decide what are the proper objects of it; and the nature and end of legislative power will limit it. There are acts which Federal and State legislatures cannot do without exceeding their authority. There are certain vital principles which will determine and overrule an apparent and flagrant abuse of legislative power; as to authorize manifest injustice by positive law; or to *take away that security for personal liberty or private property*, for the protection of which governments are instituted. An act of the legislature contrary to the great principles of the social compact, *cannot* be considered a rightful exercise of legislative authority. The obligations of a law in governments established on express compact, and on republican principles, must be determined by the nature of the power on which it is founded. A law that punishes a citizen for an innocent action, that impairs or destroys the lawful private contract of the citizen, that makes a man judge in his own case, or *that takes property*

from A and gives it to B, is against all reason and justice; and, therefore, if there was no restriction in the Constitution against such acts, it could not be presumed that the people had entrusted such power to the legislature." See also

Minturn *v.* Larue, 23 Howard, 435.
Loan Asso. *v.* Topeka, 20 Wall, 658.

The plaintiff therefore insists that the acts of Congress under which money has been paid and is likely still to be paid out of the Treasury of the United States by the defendant are void for three reasons:

1st. Such acts are void because they are forbidden by Article 1, of the Amendments to the Constitution.

2d. They are a violation of the reserved rights of the States and the people.

3d. They are a violation of the social compact and of natural right.

The same views were held by President Jefferson. In his letter to Rev. Mr. Millar, dated Jan. 23, 1808, he used this language:

"I consider the Government of the United States as interdicted by the Constitution from all intermeddling with religious institutions, their doctrines, discipline, or exercises." And the reason he gives for this opinion is twofold: "This results not only from the provision that *no law shall be made* respecting the establishment or free exercise of religion; but from that also which reserves to the States the powers not delegated to the United States." This is precisely the claim of the plaintiff in this case. When such a claim was met by the citation of instances based on a contrary principle, Jefferson replied: "I am aware that the practice of my predecessors may be quoted. *But I have ever believed that the example of State executives* led to the *assumption* of that authority by the General Government, without *due*

examination; which would have discovered that what might be right in a State Government, was a violation of that right when assumed by another. Civil powers alone have been given to the President of the United States." (5 Jefferson's Works, 236.) See also 3 Howard 589, 109 U. S. 398. 9 Cranch, 43.

This letter was written in reply to a request that the President should recommend a day to be observed as a day of fasting and prayer. But it is therefore a stronger, and not a milder assertion of the construction contended for, than the two veto messages of President Madison which are relied upon by the plaintiff; for, surely, it is a stronger expression to say that the Government shall not *meddle* with religious institutions or exercisrs, than to say, that it *shall not compel citizens to contribute their money for the propagation of opinions which they disbelieve;* which is the substance of President Madison's contention. The latter proposition is only a part of the former, only one of the particulars of a system of natural rights.

It is impossible that a power to collect money by taxation to be used in advancing the interests of a monastic order, even under color of a contract, could have been smuggled into the Constitution, under the general welfale clause or "the sweeping clause." Mr. Madison says:

"A power to impose unlimited taxes for unlimited purposes could never have escaped the sagacity and jealousy which were awakened to the minute powers that were criticised and combated in those public bodies." (The State Conventions.)—4 Madison's Writings, 134.

"The Constitution is a limited one, possessing no power not actually given, and carrying on the face of it a distrust of power beyond the distrust indicated by the ordinary forms of free government."—4 id. 135.

"There is a broad distinction between an abuse of a power actually delegated to Congress, and the usurpation of a power not delegated."—4 id. 230.

"The constitutional control of Congress in applying surplus moneys in the Treasury to constitutional objects is in the responsibility of that body to its constituents. But as to appropriations to unconstitutional objects, it is otherwise."—4 id. 239.

In the case of Permoli *v.* First Municipality, 3 Howard, 589, Mr. Justice Catron, who delivered the opinion of the court, said: "The Constitution (of the United States) makes no provision for protecting the citizens of the respective States in their religious liberties; this is left to the State Constitutions and laws; nor is there any inhibition imposed by the Constitution of the United States in this respect on the States."

In Terret *v.* Taylor, 9 Cranch, 43, Mr. Justice Story, in the course of his remarks (p. 49) said: "Consistant with the Constitution of Virginia the legislature could not create or continue *a religious establishment* which should have exclusive rights and prerogatives; or compel the citizens to worship under a stipulated form of discipline; or *to pay taxes* to those whose creed they could not conscientiously believe.

"The revolution might *justly* take away *the public patronage*, the exclusive cure of souls, and the *compulsive taxation for the support of the church*."

In Memphis Gaslight Co. *v.* Shelby County, 109 U. S. 398, this court held that "The Constitution of the United States does not profess in all cases to protect property from unjust or oppressive taxation by the States. That is left to the state constitution and state laws." Now, surely, if Congress cannot protect the religious liberties of citizens in the States; if Virginia and the other States can make laws taking away compulsive taxation for the support of a church; if Congress cannot even protect the property of religious corporations acquired since the Revolution from taxation to the extent of confiscation; then it must follow that Congress cannot lawfully take by taxation the money of the

Baptist citizens of Virginia and bestow it upon the Sisters of Charity of Emmetsburg, Maryland, either by improving their real estate in Washington, or their convent at Emmetsburg.

In the Charles River Bridge Case, 11 Peters, 547, Chief Justice Taney said that in grants affecting the public interest "nothing passes by implication."

It is not enough therefore to say that such a case as the present was not in the mind of the First Congress when the First Amendment was framed, nor of the American people when it was adopted. It is necessary to go further and say that, had this particular case been suggested, the language would have been so varied that it would have been made a special exception. The case being within the spirit of the rule must be within its operation likewise.

If it be true that the Constitution should have been so framed that an appropriation to charitable uses of the kind in question could be made, the instrument defines the way for its amendment. But to hold that Congress can make such appropriations under the Constitution, or that the Treasurer can lawfully pay money in pursuance of them, would be to substitute for the law intended by the framers of that instrument, another law entirely different, and one which they would never have been willing by itself to enact.

Another principle is important in this connection. "Though a law may be fair on its face and impartial in appearance, yet if it is administered by public authority with an evil eye and an unequal hand, so as practically to make illegal discrimination between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

Yo Hick *v.* Hopkins, 118 U. S. 356.

In the Act for Establishing Religious Freedom in Virginia (anno 1785) it is provided:

"That *no man* shall be compelled to frequent or *support* any religious worship, *place*, or ministry whatsoever; nor shall be enforced, restrained, molested, or *burdened*, in his body or *goods*, nor shall otherwise suffer, on account of his religious opinions or belief; but that *all men* shall be free to profess, and by argument to maintain, their opinions in matters of religion; and that the same shall in no wise diminish, enlarge, or affect their civil capacities."

"The rights hereby asserted are the natural rights of mankind; and if any act shall be hereafter passed to repeal the present, or to narrow its operation, such act will be an infringement of natural right."

12 Hening's Statutes, 84.

Would Virginia have delegated to Congress the power to annul this act? If not, then every act of Congress appropriating money to sectarian institutions is *ultra vires*. Some of the money so appropriated is contributed by citizens of Virginia, and is an infringement of their natural rights. "To compel a man to make contributions of money for the propagation of opinions which he disbelieves is sinful and tyrannical."

In his "Remarks on the Quebec Act," 2 Hamilton's Works, 131-5, Alexander Hamilton says: "The characteristic difference between a tolerated and an established religion consists in this: With respect to the *support* of the former, the law is passive and improvident, leaving it to those who profess it, to make as much or as little provision as they shall judge expedient; and to vary and alter that provision as their circumstances may require. In this manner the Presbyterians and other sects are tolerated in England. They are allowed to exercise their religion without molestation, and to maintain their clergy as they think proper. These are dependent upon their congregations and can exact no more than they stipulate and are satisfied to contribute."

"But with respect to the *support* of the latter (an established religion,) the law is active and provident. Certain precise dues, (tithes, etc.,) are *legally* annexed to the clerical office, independent of the liberal contributions of the people; which is exactly the case with the Canadian priests; and, therefore, no reasonable, impartial man, will doubt that the Church of Rome is established in Canada."

"While tithes were the free, though customary, gift of the people, as was the case before the passing of the Act in question, the Roman Church was only in a state of toleration; but when the law came to take cognizance of them, and, by determining their permanent existence, destroyed the free agency of the people; it then resumed the nature of an establishment, which it had been divested of at the time of the *capitulation*."

(Hamilton's Works, vol. ii, pp, 132-3-4.)

(id. p. 135.) . . "Had there been really provision made, to be applied at the discretion of his Majesty, I should still consider this act as an *atrocious infraction of the rights of Englishmen*, in a point of the most delicate and momentous concern. No Protestant Englishman would consent to let the free exercise of his religion depend upon the mere pleasure of any man, however great or exalted. The privilege of worshipping the Deity, in the manner his conscience dictates, which is one of the dearest he enjoys, must, in that case, be rendered insecure and precarious. Yet this is the unhappy condition to which the Protestant inhabitants of Canada are now reduced."

"The will of the King must give law to their consciences. It is in his power to keep them forever dispossessed of all religious immunities; and there is too much reason to apprehend that the same motives which instigated the Act would induce him to give as little future encouragement as possible."

"I imagine it will clearly appear from what has been offered, that *the Roman Catholic religion, instead of being tolerated*, as stipulated by the Treaty of Peace, *is established by the Late Act;* and that the Protestant religion has been left entirely destitute and unbefriended in Canada."

That our Anglo-American ancestors were accustomed to regard the payment of taxes for the support of a religion as iniquitous, is evident from the whole course of events which led up to the Revolution. The case of James Maury against the tax collector of Hanover County in Virginia, tried at November term, 1763, of Hanover County Court, furnishes a clue to their sentiments on this subject; which cannot be disregarded. As far back as 1696, the legislature of Virginia had allowed a stipend to the ministers of the Protestant Episcopal Church in Virginia. In 1758 the legislature passed an act temporarily exempting the tax payers from the usual assessment, because of bad crops. The clergy appealed to the Archbishop of Canterbury and the King to restore them their rights; and the Act of 1758 was declared void by the King in Council. The Reverend James Maury thereupon brought a suit for damages against the collector of Hanover for his failure to collect and pay over Maury's stipend. Patrick Henry appeared for the defendant, and the jury allowed Maury one penny as damages.

An account of Maury's case will be found in Anderson's Colonial Church, vol. 2, pp. 233 to 241. On Page 240, Anderson says.

"The claim of the clergy could not have been defeated by any other means than by a sort of revolutionary recurrence to fundamental principles, by an abnegation of the regal authority, and an exertion of popular sovereignty. Nothing less, in fact, than this was involved in the issue of the present trial (Maury's case): It antedated the American Revolution. However different the disputes which, in

a few years afterwards, brought about that event, there can be no doubt that the spirit which carried the American Colonies triumphantly through them all, was the spirit evoked by Patrick Henry in the court-house of Hanover County."

It was eleven years after this celebrated trial, in which,

"The forest-born Demosthenes,
Whose thunders shook the Philip of the seas,"

had declared the principle of natural right, before the Quebec Act was passed, anno 1774. (14 Geo. iii, ch. 83. 12 British Statutes at Large, 184.)

By reference to that act, it will be seen that it was calculated to arouse the Republican spirit to the pitch of rebellion.

Section 4 recited that the English system of civil government had been found, upon experience, to be incompatible to the state and circumstances of the said province, the inhabitants whereof amounted at the conquest to above 65,000 persons professing the religion of the Church of Rome, enjoying an established form of constitution and system of laws "suitable to their religious condition," and provided that the said form of constitution and system of laws should be assured to the people of Quebec.

Section 5 provided that all British subjects in Quebec, "professing the religion of the Church of Rome, shall have hold, and enjoy the free exercise of the religion of that church; and that the clergy of that church may hold, receive and enjoy *their accustomed dues and rights*."

Section 7 provided "that no person professing the religion of the Church of Rome and residing in said province, shall be obliged to take the oath required by the Statute of the First Elizabeth, or any other oath substituted by any other statute in place thereof," etc.

Section 10 abrogated all the provisions of the English law relating to mortmain and charitable uses.

Section 11 provided for retaining the criminal code of England and the practice conformable to it, except as the same might be modified to conform to the condition of the Canadians.

It was the Quebec act which proved the immediate cause of the Revolution. The first outburst of indignation against that act is found in the famous Suffolk resolves, the tenth section of which is couched in these words:

"10. That the late Act of Parliament for establishing the Roman Catholic religion and the French laws in that extensive country, now called Canada, is dangerous to an extreme degree to the Protestant religion and to the civil rights and liberties of America, and therefore, as men and Protestant Christians, we are indispensably to take all proper measures for our security."

These resolutions were prepared by General Joseph Warren, and were adopted at an indignation meeting held at Suffolk, Massachusetts, Sept. 9, 1774, and approved by the members of the first Continental Congress, then in session at Philadelphia, on the 17th day of the same month. This was the second starting point of the Revolution; and Warren, their author, fell in their defense at Bunker Hill, June 17, 1775.

It was the Quebec act which Richard Henry Lee, in the same Congress, pronounced the worst of all the bad acts of the British Parliament, an opinion in which he was sustained by every member of that body except the treacherous Galloway.

This is the act referred to in the Declaration of Independence, where the King and Parliament of Great Britain are denounced "for abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government and enlarging its boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies."

This act had its inception in the Vatican, and is a shocking instance of the insidious methods and perpetual intermeddling of the Pontiff in the political affairs even of Protestant nations. It is a well established historical fact that Mgr. Guarandoti, who was secretary of the Propoganda under Pope Pius VII, wrote a letter to the British Cabinet Ministers in which he enlarged upon the advantages of "the Canadian Check," and in the most seductive terms explained what an excellent thing it would be to have a proper understanding between King George III and Pope Pius VII. In this letter he also declared that the Church would always in the future, as in the past, inculcate loyalty, obedience, and respect for sovereigns, and that her influence would be entirely against any revolutionary movements; calling attention especially to the fact that the spirit of independence in America at that time was confined exclusively to the Protestant colonies south of the St. Lawrence; that it was the Protestant colonies which resisted tyranny, while the Catholic colonies of Canada remained faithful to his majesty!

The Quebec act was designed to create two factions in British America, divided on religious, racial, and territorial lines, either of which might, when occasion arose, be used as an engine to keep the other in perpetual subjection to the central authority at London. It was not doubted that the animosities engendered by a long series of wars in the past could be kept alive as a convenient leverage for oppression by allowing Quebec to retain its Bourbon constitution.

The Protestant colonies flew to arms immediately upon hearing of its passage. To them it seemed the worst act of perfidy and high treason against God and the British constitution of which it was possible to be guilty. Before that they had disliked the King as a tyrant; now, they hated and despised him as a royal apostate, as a traitor, as a co-conspirator with their old enemies, the Jesuits, and

their Canadian Indian proselytes. And hence, in the Declaration of Independence we find the King charged with having "abdicated in this country," and with having "endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions."

The horror and dismay created by the Quebec Act may best be judged of by considering the state of religious feeling in New England in Colonial times. This is well illustrated in the will of Judge Paul Dudley, of Massachusetts, made in 1750. In his will Judge Dudley bequeathed to Harvard College a sum of money for a series of annual lectures on four specified subjects, "the third lecture," so the will runs, "to be for the detecting and convicting and exposing the idolatry of the Romish Church, their tyranny, usurpations, damnable heresies, fatal errors, abominable superstitions, and crying wickednesses in their high places; and, finally, that the Church of Rome is that mystical Babylon, that man of sin, that apostate Church spoken of in the New Testament."

It is not strange, then, that we find Hamilton, as well as Warren, attacking the Quebec Act. This attack is contained in his pamphlet entitled, "A Full Vindication of the Measures of the Congress of 1774;" (2 Hamilton, 1 to 36.) and was addressed to the farmers of New York, as the surest method of exciting them to resistance. "Being ruined by taxes is not the worst you have to fear," said he, "what security would you have for your lives? Would you put your religion in the power of any man living? Remember, civil and religious liberty always go *together. If the foundation of one be sapped the other will fall of course.*" (2 Hamilton's Works, 26.)

"The English laws have been superseded by the French laws. The Romish faith is made the established religion of

the land, and His Majesty is placed at the head of it. The free exercise of the Protestant faith depends upon the pleasure of the Governor and Council. The subject is divested of the right of trial by jury; an innocent man may be imprisoned his whole life without being able to obtain any trial at all. The Parliament was not contented with introducing arbitrary power and popery in Canada, with its former limits; but they have annexed to it the vast tracts of land that surround all these colonies.'

"Does not your blood run cold to think that an English Parliament should pass an act for the establishment of arbitrary power and popery in such an extensive country? *If they had had any regard for the freedom and happiness of mankind they would never have done it.* If they had been friends of *the Protestant cause*, they would never have provided such *a nursery for its great enemy*; they would not have given such great encouragement to *popery*. The thought of their conduct in this particular shocks me. It must shock you, too, my friends. Beware of trusting yourselves to men capable of such an action." (2 Hamilton's Works, 26-27.)

Article 32 of the Constitution of North Carolina adopted in 1776, provided that:

"No person who shall deny the being of God or the truth of the Protestant religion, or the divine authority either of the Old or New Testaments; or who shall hold religious principles incompatible with the freedom and safety of the State, shall be capable of holding any office or place of trust or profit in the civil department within this State.

Article 34 provided:

"That there shall be no establishment of any one religious Church or denomination in this State in preference to any other. Neither shall any person, on any pretence whatsoever, be compelled to attend any place of worship

contrary to his own faith or judgement, nor be obliged to pay for the purchase of any glebe, or the building of any house of worship, or for the maintenance of any minister or ministry, contrary to what he believes right, or has voluntarily and personally engaged to perform; but all persons shall be at liberty to exercise their own mode of worship; provided that nothing herein contained shall be construed to exempt preachers of treasonable or seditious discourses from legal trial and punishment."

Other articles are as follows:

1. That all political power is vested in and derived from the people only.

2. That all powers of suspending laws, or the execution of laws, by any authority without the consent of the representives of the people, are injurious to their rights, and ought not to be exercised.

Article 32 remained in force until 1835. (United States Constitutions, Colonial Charters, etc., vol. 2. p. 1413–16.)

Did the people of North Carolina intend to confer upon Congress the power to nullify these articles of their State Constitution? If not, Congress could not appropriate one penny contributed in taxes by a citizen of North Carolina for the direct or indirect support "of any one religious church or denomination whatever." Certainly not for the advancement of the monastic system. For in judging of this matter the rule laid down by Chief Justice Taney in the Dred Scott case (19 Howard 394) is to be our guide; and the more liberal sentiment lately developed towards the Catholic Church cannot be taken into the account. Chief Justice Tanney said:

"The change in public opinion and feeling in relation to the African race, which has taken place since the adoption of the Constitution cannot change its construction and meaning, and it must be construed and administered now

according to its meaning and intention when it was framed and adopted." There is no difference between a race and a religious system in respect to this principle. If it is true of one, it is true of the other.

As bearing upon the point at issue, we also refer the court to the memorial addressed by the Presbytery of Hanover, and the Quakers and Baptists of Virginia, to the legislature of that State in 1777, in opposition to a measure for establishing the Christian religion without reference to any particular denomination, by laying a general tax for the support of teachers of that religion; a measure analogous to the late measures of the Government in reference to donating grounds for sectarian chapels at West Point, and moneys to the sectarian schools for Indians. We also refer to Madison's Remonstrance, anno 1785, against "a bill for establishing a provision for teachers of the Christian rel'gion." Copies of these great documents will be found in the Religious Liberty Library, No. 8, April 1893, pp. 7-13.

In his Remonstrance Mr. Madison says: "It is proper to take alarm at the first experiment upon our liberties. We hold this prudent jealousy to be the first duty of citizens, and one of the noblest characteristics of the late Revolution. The freemen of America did not wait till usurped power had strengthened itself by exercise and had entangled itself in precedents. They saw all the consequences in the principle." And further on he says: "Distant as it (the bill aforesaid) may be in its present form from the Inquisition, yet it differs from that only in degree. The one is the first step, the other is the last, in the career of intolerence."

This prudent jealousy is no less emphatically enjoined upon statesmen by Machiavelli. "This" says he "is what every wise ruler ought to do; namely, not only to look at all present troubles, but also to those of the future, against which he should provide with the greatest prudence. It is

only by recognizing difficulties afar, that they can be surely provided against; for if we wait until they come near, the malady is likely to become incurable and the remedy to become ineffectual. It happens in such cases, as the doctors say of consumption, that in the early stages it is easy to cure but hard to recognize; whilst in the course of time, the disease not having been recognized and cured in the beginning, it becomes easy to distinguish but impossible to be cured. And so in public affairs, when evils are seen far ahead they are easily remedied; but, when having been overlooked, these evils are allowed to develop into such full luxuriance as to become manifest to everybody—even to the most thoughtless among men, it is then too late to think of any remedy." (Machiavelli, in The Prince.)

How essential this prudent jealousy is, in respect to the subtle and fatal encroachments of monastic influence and power, was fully appreciated by all the statesmen of the Revolutionary period. They were all as familiar with the works of Machiavelli, Pascal, Vattel, Montesquieu, and Blackstone, as we are with those of Gladstone, Fitzjames Stephen, Paul Bert, Froude, Emile Laveleye, Brooks Adams, Prof. Morse, Bleecker Miller, and Macaulay. Defining a "right" to be "a *well-founded* claim," they all denied the principle enunciated in Deuteronomy XVII, 12, 13; and hence they sought to avoid the consequences of that principle by erecting in their Constitution of Civil Government a wall of separation between Church and State. Would such men have conferred upon Congress the power to make permanent improvements upon the lands of a monastic order, upon the lands of the Sisters of Charity, of Emmetsburg, Maryland, if such a proposition had been brought before the First Congress? The answer to this question will settle the Constitutional principle involved in this case.

These principles and authorities would seem fully to justify the Supreme Court of the District of Columbia

in following President Madison's interpretation of the First Amendment. Mr. Justice Hagner, delivering the opinion of that court in this present case said:

"The Act of Congress referred to in the agreement is contained in a paragraph of the District of Columbia appropriation bill, Ch. 387, p. 679, passed at the second session of the 54th Congress, approved March 3, 1897, and is in these words: "For two isolating buildings, to be constructed, in the discretion of the Commissioners of the District of Columbia, on the grounds of two hospitals and to be operated as a part of such hospitals, thirty thousand dollars.

"The provision of the Constitution of the United States referred to in the bill, contained in the First Amendment to that instrument, introduced by Mr. Madison at the first session of Congress after the adoption of the Constitution, is in these words: 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.'

"The question for decision is whether, either the provision of the Act of Congress just quoted, or the agreement made by the Commissioners under the authority conferred by it, in words or in effect, is in contravention of the inhibitions of the First Amendment.

"It is scarcely supposable that Congress would ever pass a law in direct and palpable opposition to the prohibitions of the amendment. Probably the only instances where such violation would ever occur would be where some provision might be passed into the form of law without sufficient consideration and in the haste of legislation which, though unobjectionable on its face, would yet in effect, tend on the one hand, to foster or encourage religious societies or churches in general or any one in particular; or, on the other, to 'prohibit the free exercise of religion' on the part of any one or of all such societies or churches.

"No man more fully understood the importance of maintaining this priceless principle than Mr. Madison; or more thoroughly comprehended its just scope and the danger in which it stood from careless legislation.

"Early in his first term as President, Congress passed an act 'for incorporating the Protestant Episcopal Church in the town of Alexandria, in the District of Columbia.' His religious affiliations were always with the Protestants, and his kinsman, Bishop Madison, who was elected the first Protestant Episcopal Bishop of Virginia, then held that office. The act, which seemed innocent enough on its face, provoked his first veto from the President; which is to be found in 1 Richardson's Presidents' Messages, page 496.

"The full text of the act appears in 22d Annals of Congress, p. 995. Its provisions are similar to the usual form of such acts, except that by section 8 it was provided the vestry might make such provision for the support of the poor of the parish as by them should be thought proper, and in like manner provide for the education of the poor children of the church. There was no way at that time, by which within the District of Columbia a vestry could be incorporated, except by Act of Congress; and but for the First Amendment, no possible objection could have been made to the act. But Mr. Madison discerned that the terms of the act were inconsistent with the inherent principles comprehended within the First Amendment; and that however harmless or beneficial the law might prove to be in practice, its passage would be an infringement of the principles of the First Amendment; and that it was his duty to prevent its admission among the laws of the country. His sedate and carefully considered language shows his sense of the high duty involved in the admonition, *obsta principiis.* He states his objections in these words:

'*Because* the bill exceeds the rightful authority to which governments are limited by the essential distinction

between civil and religious functions, and violates, in particular, the article of the Constitution of the United States, which declares that 'Congress shall make no law respecting a religious establishment.' The bill enacts into and establishes by law sundry rules and proceedings relative purely to the organization and policy of the church incorporated, and comprehending even the election and removal of the minister of the same; so that no change could be made therein by the particular society, or by the general church of which it is a member, and whose authority it recognizes. This particular church, therefore, would so far be a religious establishment by law; a legal force and sanction being given to certain articles in its constitution and administration. Nor can it be considered that the articles thus established are to be taken as the descriptive criteria only of the corporate identity of the society, inasmuch as this identity must depend on other characteristics; as the regulations established are generally unessential, and alterable according to the principles and canons by which churches of that denomination govern themselves; and as the injunctions and prohibitions contained in the regulations would be enforced by the penal consequences applicable to a violation of them according to the local law.

'*Because* the bill vests in the said incorporated church *an authority to provide for the support of the poor and the education of poor children of the same;* an authority which, being altogether superfluous if the provision is to be the result of pious charity, would be a precedent for giving to religious societies, as such, a legal agency in carrying into effect *a public and civil duty.*'

"A few days afterwards Mr. Madison returned with his objections another bill which had passed Congress, for the relief of five persons named therein and of the Baptist Church at Salem meeting house, in the Mississippi Territory. The first five sections cured certain formal defects

in the titles of parcels of land which had been paid for by the individuals named therein, and were unexceptionable in all respects. Section 6 provided, 'that there be reserved the quantity of five acres of land, including Salem meeting house, in the Mississippi Territory, for the use of the Baptist Church at said meeting house.' 22 Annals, 1103–4.

"The president said he returned the bill with the following objection: 'Because the bill, in reserving a certain parcel of land of the United States for the use of said Baptist Church, comprises a principle and precedent for the appropriation of funds of the United States, for the use and support of religious societies, contrary to the Article of the Constitution which declares that Congress shall make no law respecting a religious establishment.' 1 Richardson's Messages, 490.

"In each case the veto was sustained in Congress.

"It certainly seemed to be but a harmless act for the Government to grant to this impoverished church a few acres of wild land on the margin of a great wilderness; and probably this was the argument of those members of Congress who opposed the veto; either one of whom might probably have paid the full price of the land out of his pay for one day. But there would have been exhibited in making that insignificant gift the same contempt of the spirit of the First Amendment that would have been evinced if Congress had granted a dotation of half a million of acres, sufficient to endow a vast cathedral establishment or a great hospital under sectarian control. The difference would have been only one of degree.

"Examining the Act of Congress before me by the tests presented in the veto messages, I can see nothing in the language or natural scope or effect of the act itself, inconsistent with the principles of the First Amendment. It was perfectly known to Congress there are in the District

a considerable number of hospitals, some under sectarian control, but the majority of which are under nonsectarian management. There is nothing in the act intiminating that either of the hospitals to be selected by the Commissioners was to be under sectarian control; and especially in view of the subsequent section of the same appropriation bill, to be found on page 683, I must conclude that Congress could have had no such purpose.

"That section is in these words:

'It is hereby declared to be the policy of the Government of the United States, to make no appropriation of money or property, for the purpose of founding, maintaining, or aiding, by payment for services, expenses or otherwise, any church or religious denomination, or any institution or society which is under sectarian or ecclesiastical control; and it is hereby enacted that from and after the 30th day of June, 1898, no money appropriated for charitable purposes in the District of Columbia shall be paid to any church or religious denomination, or to any institution or society which is under sectarian or ecclesiastical control.'

"No one reading these two paragraphs of the act as though incorporated into one, could possibly conclude that Congress had directed or expected that the $30,000 appropriated should be expended within the grounds of any hospital under sectarian control, whether Lutheran, Methodist, or Roman Catholic. For when Congress, after making the appropriation, had made the foregoing declaration of the policy of the Government as to the *appropriations of money or property* to sectarian institutions, it would seem to have closed the discussion of the question.

"That the two paragraphs should be taken together, is in accordance with the settled rules for the construction of statutes. In Pennington *v.* Coxe, 2 Cranch, 53, Chief Justice Marshall said: 'That every part of an act is to be taken into view for the purpose of discovering the mind of the

legislature, is among those plain rules laid down by common sense for the exposition of statutes which have been universally acknowledged.'

"In Alexander *v.* City of Alexandria, 5 Cranch, 7, the Chief Justice declared: 'If in a subsequent clause of the same act, provisions are introduced which show the sense in which the legislature employed doubtful phrases, previously used, that sense is to be adopted in construing those phrases.'

"In Rice *v.* Minnesota & N. W. R. Co., 1 Black, 358, the court said: 'It is not competent to reject or disregard a material part of an Act of Congress, unless it be so clearly repugnant to the residue of the act that the whole cannot stand together.' See also Bode *v.* State, 7 Gill, 326.

"If the paragraph making the appropriation had distinctly directed the isolating building to be constructed within the ground of Providence Hospital, it might have been considered as particular exception to the foregoing declaration of the general and paramount policy of the Government with respect to appropriations to institutions under sectarian control, and therefore not designed to be comprehended within its provisions. But the paragraph contains no such direction, and the principle applies that statutes must be interpreted, if possible, so as to make them consistent with the Constitution and the paramount law. Parsons *v.* Bedford, 3 Peters, 433; Presser *v.* Illinois, 116 U. S. 252.

"The duty entrusted by the Act of Congress to the Commissioners with respect to the construction of the isolating buildings came before them for execution as expressed and limited by the two paragraphs referred to. Whatever authority the Commissioners of the District of Columbia possessed with reference to the subject, they could only have acquired from Congress, which of course could communicate to them no powers it did not constitutionally

possess. Whatever acts were forbidden by the Constitution to Congress with respect to the assistance of religious establishments, were of course forbidden to its agents the Commissioners." (26 Wash. Law Rep. 85-86.)

Let the law and the facts be minutely examined and they will be found to support this opinion completely.

By analyzing the First Amendment, with reference to its grammatical structure, the meaning of the terms embraced in it, and the logical construction of them, we shall see more clearly the purpose of the whole. It is a compound sentence composed of six simple sentences contracted.

1. Congress shall make no law respecting an establishment of religion.

2. Congress shall make no law prohibiting the free exercise of religion.

3. Congress shall make no law abridging the freedom of speech.

4. Congress shall make no law abridging the freedom of the press.

5. Congress shall make no law abridging the right of the people peacably to assemble.

6. Congress shall make no law abridging the right of the people peacably to petition for redress of grievances.

Every one of these sentences except the first refers to a mere right unconnected with property. The predicates of all but the first may be made the subjects of sentences in the passive construction; as, the free exercise of religion shall not be prohibited by any law to be made by Congress; the freedom of speech shall not be abridged, etc.; the freedom of the press shall not be abridged, etc., and so of the others. But such is not the case with the first sentence. To say, "an establishment of religion shall not be respected by any law to be made by Congress," would not convey the meaning of the original. "Respecting," then, is not a

participle in this instance like, prohibiting and abridging. Concerning these, there is no ambiguity; but respecting calls for judicial interpretation.

In Webster's Dictionary it is defined thus: "RESPECTING, prep.—With regard or relation to; regarding; concerning." Law making by Congress is, then, forbidden, with regard or relation to an establishment of religion.

ESTABLISHMENT.—This word Webster defines to be:

"1. The act of establishing, ratifying or ordaining; settlement; confirmation.

"2. The state of being established, founded, and the like; fixed state.

"3. That which is established; as: (*a*) A form of government, civil or ecclesiastical; especially a system of religion maintained by the civil power; (*b*) A permanent civil, military, or commercial force of organization; (*c*) The *place* in which one is permanently fixed for residence or business; that which serves for the carrying on of a business."

OF.—Two of the twelve definitions of this word given by Webster are as follows:

"6. Denoting reference to the thing; about; concerning; relating to."

"10. Denoting relation to place or time; belonging to; connected with."

"Of, may be used in the subjective or objective sense. 'The love of God' may mean our love for God, or God's love for us."

RELIGION.—Webster gives four definitions of this word, the third of which is as follows:

"3. (R. C. Ch.). A monastic or religious order, subject to a regulated mode of life; the religious state; as to enter religion."

AN.—This word also calls for construction. In every universal negative proposition it is distributive, and means, "any." But 'any,' implies more than one, just as 'every',

in a universal affirmative does. It places all the particulars it modifies in the same category. No law shall be made, therefore, respecting one single establishment of religion, or any number of such establishments. Religion shall not be established by Congress in one single corporation or in many. If it can be established in many, why not in one—many includes one; and one would cost less for its support than many.

"An establishment" denotes, in one sense at least, a *fait accompli*; "the establishing" donates a process. It is not merely the latter but the former also with reference to which all law-making is forbidden; and let it be remembered that law-making is the only thing forbidden. An establishment of religion already existing in any State, or which might afterwards be created by any State, was not intended to be affected by this provision. The States might retain, reject, establish, or disestablish religious institutions; but Congress was interdicted from intermeddling alike with such institutions and with their doctrines, discipline or exercises.

Chief Justice Waite, in the case of Reynolds *v.* United States, 98 U. S. 145, 162, 164, quotes from a letter of Mr. Jefferson, as follows:

"Believing with you that religion is a matter which lies solely between man and his God; that he owes account to none other for his faith or his worship; that the legislative powers of the Government reach actions only and not opinions—I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion or prohibiting the free exercise thereof,' thus building a wall of separation between Church and State. Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore man to all his *natural rights*, convinced *he has no natural right in opposition to his social duties*." The Chief

Justice then adds: "Coming as this does from an acknowledged leader of the advocates of the measure, it may be accepted almost as an authorative declaration of the scope and effect of the Amendment thus secured."

The kernel of the whole scheme is that Almighty God has created the mind free. In order to see the importance of it, it must be contrasted with the monastic theory which is the kernel of the greatest religious establishment in the world, a theory whose pecularities are soul-slavery, mind-slavery, body-slavery, absolute poverty and perpetual barrenness. This was distinctly recognized and stated by Prof. Morse. "From their principles of passive obedience, and the denial of the right of private judgment alone," said he, "Roman Catholics, as a sect, must be the ignorant and willing slaves of any despotic ecclesiastic who may, for the time being, rule over them." But these principles are mere derivatives from that higher one which recognizes "a superior who represents God"—a mortal divinity, an Infallible Pope. Upon this rests the whole scheme of the monastic system, as laid down in the so-called Evangelical Counsels. Let me submit an outline of that wonderful scheme. I take it from DeHarbe's Full Catechism of the Catholic Religion, pages 233–4:

"Q. What particular means of attaining perfection have been recommended by Jesus Christ?

"A. Chiefly those which are called the Evangelical Counsels.

"Q. What are the Evangelical Counsels?

"A. Voluntary poverty; 2, perpetual chastity; 3, entire obedience to the will of a spiritual superior.

"Q. What is entire obedience?

"A. It is a renunciation of one's own will, in order to do the devine will more surely under a superior who represents God.

"Q. Why are the Evangelical Counsels special means of perfection?

"A. 1. Because by them the chief obstacles to Christian perfection are removed, namely, the inordinate love and desire of earthly goods, sensual pleasures and the pride of independence; and 2. Because of them man sacrifices to the Lord his God all that he has and is; his *exterior goods*, by the vow of poverty; his *body* by the vow of chastity; and his *mind*, or will by the vow of obedience."

Q. "Who are obliged to observe the Evangelical Counsels." A. "All religious, and all those who have bound themselves by vows to keep them."

Now, the taking and keeping of these vows result in what is called supererogation. Concerning this I quote from Buck's Dictionary, page 572:

"SUPEREROGATION—is what a man does beyond his duty, or more than he is commanded to do. The Romanists stand up strenuously for the works of supererogation, and maintain that the observance of evangelical counsels is such. By means of which a stock of merit is laid up, which the church has the disposal of, and which she distributes in indulgences to such as need.

"This absurd doctrine was first invented toward the close of the twelfth century, and modified and embellished by St. Thomas in the thirteenth, according to which, it was pretended that there actually existed an immense treasure of merit, composed of the pious deeds and virtuous actions which the saints had performed beyond what was necessary for their own salvation, and which were, therefore, applicable to the benefit of others; That the guardian and dispenser of this precious treasure was the Roman pontiff; and, that, of consequence, he was empowered to assign to such as he thought proper, a portion of this inexhaustible merit, suitable to their respective guilt, and sufficient to deliver them from the punishment due to their crimes." See also De Harbe's Catechism, 291 and 326.

The statements of DeHarbe and Buck being taken as true, let us connect them with the fact that Protestant Americans

pay taxes into the Federal Treasury, a part of which are paid out on contracts or subsidies to monastic orders.

If our taxes are used in part to aid monastic orders; and if monastic orders are founded in principle upon the Evangelical Counsels; and if the observance of these constitutes supererogation; and if supererogation is a precious treasure placed at the Pontiff's disposal; and if the Pontiff and his agents dispense this treasure to sinners and criminals for money or any other advantage, in such a way as to exempt the guilty from the penalties or penances due to their crimes; and, finally, if such licenses for exemption from the consequences of guilt encourage crime; then, it follows, that our taxes are used in part for the enrichment of the Pope and his agents, and for the encouragement of crime.

Again, it is to be admitted by every one, that evangelical counsels, supererogation, and the granting of indulgences, are characteristics of a religious system pure and simple, and not of a civil system ; and therefore, indeed, if religious persons engaged in the operations of that religious system, subject to the supervision of a superior who represents God, draw their necessaries of life from the public fund raised by taxation for civil purposes only, and thereby become entangled with the political system in the vital matter of subsistence, the civil authority thus becomes a party to the operations of a religion, and responsible for the effects thereof. Whether the coalition be made under the subterfuge of a contract or not, the effect upon the tax-payer is the same; the effect upon the subsidized religion is the same, and the effect upon civilization is the same. This spurious contract system is what Mr. Gladstone would have called Rome's newest fashion in religion. It is a pious fraud. It breaks down the "wall of separation between Church and State"; it destroys "the essential distinction between the civil and religious functions"; it compels the tax-payer "to make contributions of money for the propagation of opinions which he disbelieves;" and, moreover,

it subverts and nullifies not only our written constitution but also that great ancillary policy connected with it, known as the Monroe Doctrine, which was intended to prevent the re-establishment of Spanish and Roman civilization in our neighborhood, as inimical to republican institutions and the natural rights of man. It has been the means of insinuating the poison of that civilization into the very heart of this nation. It is itself an element of that civilization, and has found its vindication only in a train of reasoning not often heard in courts of justice.

Let us now look to some hypothetical cases. It is provided in the Constitution that *no person*, except a natural born citizen, etc., shall be eligible to the office of President. Would an act of Congress be constitutional if it should declare Aguinaldo or some other popular foreigner to be eligible to that office?

Congress was forbidden to prohibit the migration or importation of such persons as any of the existing States should think proper to admit, prior to the year 1808. Would the Act of 1815 which prohibited the slave trade have been constitutional if it had been passed prior to 1808?

"The privilege of the writ of habeus corpus shall not be suspended, unless when, in case of rebellion or invasion the public safety may require it." Would an act of Congress suspending the writ of habeus corpus in time of peace be constitutional?

"No bill of attainder or ex post facto law shall be passed." Suppose Congress should pass a bill of attainder against me, would it be constitutional? Suppose it should pass an ex post facto law, would not this court declare it to be void? (Serg. Const. Law, 357).

"No capitation or other direct tax shall be laid unless in proportion to the census or enumeration herein before directed to be taken." This court has decided that an act of Congress violating this prohibition was void.

"No tax or duty shall be laid on articles exported from any State."

The prohibition here is exactly coextensive with that of the First Amendment. It is universal. Would an act of Congress laying any duty whatever on exports from any one of the States be constitutional?

"No money shall be drawn from the Treasury but in consequence of appropriations made by law."

Would this court hold that a statute authorizing money to be drawn from the Treasury to build a Roman Catholic Church at West Point or a Cathedral at Washington, would justify the Treasurer in paying out the public money in view of this provision? Would such a statute be constitutional?

"No title of nobility shall be granted by the United States." Would an act of Congress granting one or more titles of nobility be constitutional?

"No religious test shall be required as a qualification for any office under the United States." Would a religious test for any one office be constitutional? Would an act of Congress requiring the President to be a Baptist be so?

Finally, suppose that Congress should enact a statute authorizing any State to pass bills of attainder, ex post facto laws, and laws impairing the obligation of contracts, what would be the effect of such forbidden legislation?

Concerning constitutional limitations and the philosophy underlying them, see opinions in Fletcher *v.* Peck, 6 Cranch, 124, 136-7-8.

Marbury *v.* Madison, 1 Cranch, 138.
Bank of Hamilton *v.* Dudley's Lessees, 2 Peters, 492.
City of New York *v.* Miln, 11 Peters, 102.
Gibbons *v.* Ogden, 9 Wheaton, 1.
Brown *v.* Maryland, 12 Wheaton, 219.
Briscoe *v.* Bank of Kentucky, 11 Peters, 257.
Charles River Bridge *v.* Warren Bridge, 11 Peters, 420.

Reynolds v. U.S. 98 U.S. 162-4

Prigg *v.* Pennsylvania, 16 Peters, 539.
Passenger Cases, 1 Howard, 283.
Income Tax Cases, 158 U. S., 601.
Ex parte, John Merryman, Tyler's Memoir of Taney, 646.

In Marbury *v.* Madison, Chief Justice Marshall, disposing of the question whether the Constitution of the United States is to be regarded as an absolute limit to the legislative powers, or is as in England, at the mercy of the legislature, used this language:

"The powers of the Legislature are defined and limited. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may at any time be passed by those intended to be restrained? The distinction between a Government of limited and unlimited powers is abolished, if these limits do not confine the persons on whom they are imposed. It is a proposition too plain to be contested, that the Constitution controls any legislative act repugnant to it, or that the Legislature may alter the Constitution by an ordinary act. Between these alternatives there is no middle ground. The Constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the Legislature shall please to alter it.

"If the former part of the alternative be true, then a legislative act contrary to the Constitution *is not law:* if the latter part be true, then written Constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable.

"Certainly all those who have framed written Constitutions contemplate them as forming the fundamental and permanent law of the nation; and, consequently, the theory of every such Government must be, that an act of the Legislature repugnant to the Constitution is void.

"This theory is essentially attached to a written Constitution, and is consequently to be considered by this Court as one of the fundamental principles of our society."

In Phillips *v.* Quick, 63 Ill., 445, the court said:

"It may be said that constitutional provisions require legislation to carry them into effect. This may be true in many cases, but not in all; as will occur to every person on a moment's reflection. In cases where its provisions are negative or prohibitory in their character, they execute themselves. When this instrument limits the power of either of the departments of the Government, or where it prohibits the performance of an act by an officer or person, no one would contend that the power might be exercised or the act performed until prohibited by the General Assembly. The Constitution undoubtedly has as much vigor in prohibiting the exercise of power or the performance of an act as the General Assembly has. That body could add to the prohibition penalties and forfeitures for disregarding the Constitutional prohibition, but the prohibited act would nevertheless be void.

"When the Constitution requires the performance of an act, but provides neither officers nor the means or mode in which the act shall be performed, in such a case there is no other means of carrying such a provision into effect but by appropriate legislation. In such cases the Constitution does not execute such provisions. That instrument, all will concede, may repeal, and does repeal, laws which are repugnent to its provisions."

And in Cook County *v.* Industrial School for Girls, 125 Ill., 540, the Court said: "If on the one side a statute directs the County board to pay money to a school, which appears not on the face of the statute, but from outside proof, to be controlled by a church; and if on the other side, the Constitution, in a self-executing prohibition directs the County board not to pay money to such a

school; *which direction is to be followed?* We answer unhesitatingly *the latter.* When the constitution says "you must not pay" it must be obeyed in preference to a statute which says "you must pay." And this is true not only where the statute, on its face, is in conflict with the constitutional provision, but also in a case *where an attempt to apply the statute to a given state of facts gives rise to* a violation of such a provision."

One violation of a constitutional prohibition is no excuse for another, and no constitutional rights are barred by estoppel or prescription. In Washingtonian Home *v.* Chicago, 157 Ill. 414, it was insisted in the argument that since the city had paid over the fund in dispute quarterly for a period of over twenty years, the payment having been recognized each year in the annual appropriation ordinances of the city; and that since the city had received substantial benifit each year, it was bound by its ratification of the act, and was therefore *estopped from denying its constitutionality.* But the court said (p. 428): "The fact that the officers of the city for twenty-two years, paid over to the Home, annually, a portion of the revenue of the city in violation of law, could not work an estoppel on the city. Nor did the fact that the City Council annually, in its appropriation ordinances, recognized and made provisions for the payment of the fund to the Home estop the city from refusing to make payment at any time it might elect to do so. The revenues of the city of Chicago, arising from licenses, from taxation and from all other sources, are owned by the the city, and held by it in trust to be used for corporation purposes which are lawful; and the revenues of the city can not be diverted to any other purpose."

"The revenues of the city can not be diverted by the officers of the city, or by the City Council, to any person they may think entitled to the same; but, on the other hand, such revenues *can only be paid out*, or appropriated, by the City Council or *its officers* in a manner and for purposes

authorized by law. Where the lawful power does not exist, the payment is unauthorized and void; and the city will lose no rights where the money has been unlawfully paid out by its officers. The city having no power to pay over its revenues to the Home, the fact of payment for a series of years will not estop it."

On the question of estoppel see also, 7 Am. and Eng. Encyc. of Law, 17, 18; Bigelow on Estoppel, 2d ed., 345; Logan County *v.* City of Lincoln, 81 Ill., 156.

Judge Cooley says, (Const. Lim. 5th ed., 580.): "Those things which are not lawful under any of the American Constitutions may be stated thus * * * 2. *Compulsory support, by taxation or otherwise, of religious institutions.* Not only is no one denomination to be favored at the expense of the rest, but all support of religious instruction must be entirely voluntary."

Arguing from these fundamental principles Mr. Justice Magruder, in the Cook County case, disposed of several questions that have been raised in this case. Said he: "It is not contended by the county that the organization of appellee is defective; on the contrary it seems upon the face of the papers, to have been organized in strict conformity to the statutory requirments. The Constitution forbids the county to pay—the defense is grounded more upon the constitutional prohibition as controlling the action of the defendant (the county) than upon such want of power, or abuse of power, as affects the plaintiff in the suit (125 Ill., p. 564)

"Suppose that a corporation, organized for a lawful purpose, maintains and operates a gambling institution and brings suit upon a note payable to its own order, and given to it for a lawful debt. The maker of the note can not defend on the ground that the plaintiff is perverting its power by running a gambling establishment. That matter must be inquired into by a writ of *quo warranto* or *scire facias*. But if the note in question *had been given for a gambling debt*,

that fact could be set up as a defense, because the statute makes such a note absolutely void (Id. pp. 564-5.)

"If the contract sued upon is a contract by the county *to pay money out of the public funds in aid of a sectarian purpose*, it is absolutely void; for the constitutional prohibition against *paying* money is equally a prohibition against a *contract* to pay money. Can it be doubted that the void character of such a contract can be set up as a defense? (Id. p. 565.)

"It is strenuously contended by counsel that section 3 was intended only to affect gifts or donations, and that it refers to State support, gifts by way of aid, and appropriations to be used by managers of religious institutions without restraint or liability to account. The theory seems to be that, even if the two institutions are controlled by a church, and are to be the recipients of all the money paid to appellee, yet neither they nor their purposes are aided by such payments, provided only that there is a consideration for the money so paid. It is said that these institutions furnish tuition and clothing in return for the money received by them, and that since they earn what they get and are not the recipients of any gifts or donations, nothing is paid in their aid or to help support or sustain them. * * * *

"The doctrine here contended for is an exceedingly dangerous one. In the County of McLean *v.* Humphreys, 104 Ill., 378, it is intimated by this court that the State is under obligations to protect and educate such classes of female infants as were declared to be dependent girls. * * * * Under this view the industrial schools which teach and care for such girls are performing as substitutes for the State, a duty which the State is bound to perform. If they are entitled to be paid out of public funds even though they are under sectarian denominations, simply because they relieve the State of a burden which it would otherwise be itself required to bear, then there is nothing to prevent *all public education* from becoming subjected, by hasty and unwise legislation, to sectarian influences. It being the duty of the State to

provide an efficient system of free schools, if statutes are passed, under which the management of these schools shall get into the hands of sectarian institutions then under the theory contended for, the prohibition of the constitution will be powerless to prevent the money of the taxpayers from being used to support such institutions, as they will render a service to the State by performing for it its duty of educating the children of the people. It is an untenable position that public funds may be paid out to help support sectarian schools, provided, only, such schools shall render a *quid pro quo* for the payments made to them." (Id. p. 571.)

This is in accord with the soundest philosophy. "It is in the matter of education" says Plato, "that our guardians should erect their guard-house; for here it is that superstition creeps in unawares in the guise of amusement or religion, professing to do no mischief. And, indeed, it does none, except that, gradually gaining a lodgment, it quietly insinuates itself into manners and customs, from which it goes forward in greater force and makes its way into mutual compacts. And from compacts it goes on to attack laws and constitutions, displaying the utmost impudence, until it ends by overthrowing everything, both in public and in private."

Again, in the case of Farmer *v.* St. Paul, 67 N. W. Rep., 990, Chief Justice Start, reasoning upon the same general principles, condemned a contract with the House of the Good Shepherd, in the form of an ordinance of the City Council of St. Paul.

"Clearly," said he, "this ordinance is in excess of the authority conferred upon the city, and it is void for that reason. As a legal proposition (the question of propriety of so doing aside) the city council had as much power to establish and declare any church in the city a work-house for female prisoners, and to authorize the city courts to commit any female convict to the custody of the rector or

pastor of said church, and require and authorize him to keep such prisoners at hard labor not exceeding thirty days, and to make monthly reports to the City Council, as it had to declare the House of the Good Shepherd, or any other institution not subject to public control, such a work-house. The only work-house the city was authorized to establish was a public work-house, which should be governed and controlled by municipal authority. This ordinance does not establish such a work-house. It is void, and all commitments of female prisoners to the House of the Good Shepherd by the city courts are void.

"It necessarily follows that any contracts on the part of the city, express or implied, for the future detention and support of prisoners in an institution to which such prisoners cannot be legally committed, are illegal."

Another case involving these principles is that of State *ex rel* Nevada Orphan Asylum *v.* Hallock, State Controller, 16 Nevada, 373.

It was an application for a mandamus to compel the State Controller to audit an account for $1,279, and to issue his warrant on the State Treasurer for the same in favor of the petitioner, the Nevada Orphan Asylum, said amount having been apportioned and allowed to the petitioner by a majority of the board of asylum commissioners for the support and maintenance of orphans and half orphans, under the statute of the State. The Controller, Hallock, refused to audit the account, or to draw the warrant on the ground that the Nevada Orphan Asylum, which was *a branch of the Mother House of the Sisters of Charity of Emmetsburg, Maryland*, was a sectarian institution; and that he was forbidden to comply with petitioner's request by section 10 of article XI of the State Constitution, which reads as follows:

"Section X. No public funds of any kind or character whatever, State, county or municipal, shall be used for sectarian purposes."

Leonard, Chief Justice, delivering the opinion of the Court said:

"The respondent admits that the claim of the petitioner is valid in every respect, except as above stated; and it is not claimed that the statute referred to is unconstitutional. In short the respondent concedes it to be his duty to audit the account and draw his warrant therefor, if by so doing he would not use the State's money for sectarian purposes; but, on the contrary, he conceives it to be his duty to refuse compliance with the petitioner's demands if, in fact, the Nevada Orphan Asylum is a sectarian institution, notwithstanding the statute.

"That the legislature, under the Constitution, could not have appropriated moneys for sectarian purposes is too plain for argument; and it is equally plain that State funds should not and cannot be used for such purposes in any case as the statute is written, any more than they could have been so used if the statute had contained a proviso excepting asylums or institutions of a sectarian character.

"No officer is justified in obeying the letter of the law, if in so doing he violates the spirit and letter of the Constitution.

"Counsel for petitioner say that petitioner has performed its part of a contract, and the State should now be required to perform the contract on its part. The Constitution, as amended, was in force when the statute was passed, and petitioner is presumed to have had knowledge of its provisions. It knew also that it could not receive the benefits and privileges of the statute, if such action would violate the Constitution. In fact, if payment of petitioner's claim would be using the State's moneys for sectarian purposes, it has had no right to suppose that the statute was intended for its benefit. (Id. p. 379.)

"Constitutions, as well as statutes, are to be construed in the light of previous history and surrounding circumstances. (Id. p. 379.)

"It is admitted by counsel for petitioner that the St. Mary's School is a part or branch of the Nevada Orphan Asylum; that it is controlled exclusively by officers of the latter, who are Sisters of Charity, members of the Roman Catholic Church, and who cannot become sisters unless they are members of that Church. The petitioner is a branch of the "Mother House" at Emmetsburg, Maryland, and has to report to it. (Id. pp. 383–4.)

"Counsel for the petitioner lay great stress upon what are claimed to be the facts; that is to say, that Protestant children are taught only those things which are common to all Christian people; and that only the children of Catholic parents are taught the principles of the Catholic Church. In the first place the facts are not so; and in the second place, if they were, the instruction given to the Catholic children would stamp the institution as sectarian. The Constitution prohibits the use of any of the public funds for any such purposes, whether parents wish it or not. If all the children at the asylum were Catholics, and all their parents or friends wished them to be taught Catholic dogmas, these facts would not make the institution nonsectarian. It is what is taught, not who are instructed, that must determine this question."

The argument relied on by the Court of Appeals for ordering the bill in the present case to be dismissed, is that because Congress *has incorporated* religious institutions, it has the power to do so; and since it has that power, it has the right to make contracts with such institutions when incorporated. This involves not only the fallacy of asserting the consequent and inferring the antecedent, but also the absurdity of deriving an incidental power to legislate respecting religious institutions from an absolute prohibition of any and all legislation on that subject—of deriving something from nothing. It is a phase of teleology more in keeping with poetical or clerical than with judicial methods. So far as I know, the argument from design has no place

among the canons of constitutional construction. But let it be assumed for convenience that Congress had the power claimed for it in respect to the creation of such corporations.

A corporation is a mere creature of the law, deriving all its powers from the act incorporating it, and can exercise the same only in the manner therein authorized. (Bank of Augusta *v.* Earle, 13 Peters 519.)

In reference to this principle it is worthy of remark here that the Commissioners agree to pay a designated rate for the patients they may send to the ward for minor contagious diseases, *subject to annual appropriations made by Congress;* while Section 81 of the Revised Statutes of the District (which, by the Act of 1879, is applicable to the Commissioners) declares the Commissioners 'shall have no power to make contracts to bind the District except in pursuance of appropriations made by law, and *not until such appropriations shall have been made.*"

And again, while the act of April 8, 1864, authorizes "The Directors of Providence Hospital," *by that name*, to "care for such sick and invalid persons as may *place themselves* under the treatment and care of the said corporation" (13 Statues 43); yet "Sister Beatrice, President of Providence Hospital," stipulates "that two-thirds of the entire capacity of said isolating building or ward shall be reserved for the use of such poor patients as shall be *sent there by the Commissioners through the proper officers.*" (26 Washington Law Reporter, 243) Certainly in these matters both parties to the compact have exceeded the limits of their authority.

Again, "said Providence Hospital agrees to always maintain a *neutral zone* of forty feet around said isolating building or ward' *and grounds connected therewith* to which patients of said ward may have access." Now, what is a neutral zone? and how much territory might it be made to inclose in the neighborhood of Providence Hospital? This is an extremely suspicious provision. It implies the assent of the Commissioners to the assumption by Sister Beatrice of

the power to maintain a neutral zone around a territory indefinitely bounded. Could the officers of the law serve a writ of habeas corpus within that territory? Could they cross that neutral zone? Would not Providence Hospital become a "city of refuge" if this neutral zone were established? The term must be taken in its technical sense.

This compact is on its face a mere conspiracy. The agreement to receive prisoners without due process of law, (judicial process) and in violation of that part of the charter which secures personal liberty to the inmates of the hospital, is one part of the consideration. The neutral zone arrangement by which these prisoners might be held indefinitely, and by which fugitives might be protected, is the other part of it. The whole consideration is, therefore, null and void, as contrary to law. (See Ex. Parte John Merryman, Tyler's Memoirs of Taney, 646.) Yet this is the *quid quo pro* which the taxpayers of the United States are to receive, according to the terms of the compact, for money wrung from them for the benefit of a monastic order located in Emmetsburg, Maryland, and controlled in all its branches by the Pope of Rome!

The title to property rests upon the power creating such title, which in this case is the power of taxation vested in Congress by the Constitution, and it must depend for its validity upon the terms, conditions, and limitations of that power. The Constitution is a system of parts and their relations determining the character and effect of the whole. One who supports it in good faith must observe its prohibitions as well as its positive commands. He must not do what it forbids.—If he does, his act is void for want of authority. *The Constitution binds and limits both Congress and the Treasurer in reference to the disposition of public money or property, as well as in reference to the laying and collection of taxes.*

In his work on the Conflict of Laws, sections 363 *et seq.*, Judge Story notes and dwells upon the important distinc-

tion between local and personal statutes and contracts; and in the case of Wills *v.* Cowper, 2 Hamm. 124, the same question was ably discussed by Mr. Justice Sherman. Now, if that distinction is to be observed here, the contract between the Commissioners and Providence Hospital is either local or personal. If it is local, it is prohibited by the Constitution, because the land on which the building is to be erected at the expense of the United States is the property of a religious establishment, a monastic order, having its habitat in Maryland, and Providence Hospital, as to its members, is subject to, and not superior to, that order. If it is a personal contract, it is void because the premises on which the house is to be built are not properly described and identified; since Providence Hospital does not own any land at all; and cannot, as at present constituted, own any property; its membership being nuns under the vows of poverty and obedeince, who cannot in the eye of the law be competent to execute personal trusts and confidences.

The reasons for this incapacity to become civil and public agents was clearly stated by Prince Bismarck in his speech defending his order of June 15, 1872, forbidding certain nuns from teaching in the public primary schools of Germany, on account of their ecclesiastical relations.

"These teachers," he said, "are bound to their order by the most sacred vows. Before they become teachers or servants of the state, they are vowed to passive obedience to superiors who are often not within the jurisdiction of the state; and their views, the conditions of their position, do not permit them to understand the nature of the state in which they live. Alien authorities assume to decide how far these teachers shall obey the laws, while that alien authority itself has not the independence which it formerly enjoyed. Moreover, secular remonstrance is of little weight with those who are so bound by religious vows. How entirely their individuality is lost is shown in Rhenish Prussia, in Westphalia, in Silesia, where the contracts for this service are not concluded

with a person, but with a superior or a congregation. Even their salaries are paid to the superior or to the congregation."

A personal trust or confidence, therefore, in this case must prove abortive, and cannot be maintained upon legal principles; the powers of the corporation known as Providence Hospital being delegated civil powers, while the persons composing that corporation are subject to the jurisdiction of an alien ecclesiastical body, of which they are also members. The religious as well as the civil side of the institution must be considered; for it has a double nature and a double purpose.

An act of incorporation is the establishment of a body corporate and politic; and a body politic which is composed of religious persons, separated by vows from the rest of the community, and which draws its support, wholly or in part, from the public treasury, is a religious establishment, and therefore falls within the letter and spirit of the constitutional inhibition.

The 'Sisters of Charity' is an order of nuns established by the Pope of Rome. It matters not that it has also been incorporated under the laws of Maryland, it is still, as to this District, a foreign corporation. By the comity of nations it is permitted to hold property here. It may also dispose of all or any part of its property. Now suppose that its Superior at Emmetsburg should transfer her subordinates, Sister Beatrice included, to some other locality, and sell Providence Hospital, or give it to the Archbishop of Baltimore; could the Government recover the money which it has advanced already, or that which it now proposes to advance, for erecting buildings on the real estate belonging to the Sisters of Charity? This is the *quid pro quo*, so loudly talked of by some and so inconsiderately by others. Is it not elusive? Any payment made on credit to Providence Hospital, or for its benefit, is a credit given really to the Sisters of Charity of Emmetsburg, Maryland.

The Directors of Providence Hospital own nothing, Sister Beatrice owns nothing. The Mother House of their order is the real beneficiary of Congressional bounty in this case. It owns the property, it controls the Sisters; but it was not incorporated by an act of Congress; it is not a citizen of this District; it can not be controlled by the Federal Government.

The attention of the Court is respectfully called to the following extract from part 2 of the report of the Joint Select Committee to investigate the Charities and Reformatory Institutions of the District of Columbia, (H. R. Report No. 776, 55th Congress, 2d session, pp. 12–13.):

"*The Providence Hospital* is owned by the Sisters of Charity of Emmetsburg, Md., and is conducted by them. The institution is not primarily a charitable institution. Persons seeking hospital care are admitted at a charge for board and lodging, varing according to the accommodations furnished, and in addition they pay for medical attendance such as may be agreed upon between the physicians and the patients. Any physician in good standing may send a patient to the hospital and there treat him. The hospital also receives an income from medical students who attend clinics.

"The United States has a contract with the hospital, by which the institution agrees to care for an average of 95 patients sent by the Surgeon-General of the Army, and for this service it receives the sum of $19,000 annually, making the average daily cost to the Government 54.9 cents per day per patient. . . . . .

"Theoretically, all patients are admitted on the order of the Surgeon-General; practically, cases are admitted by the Sister in charge, who simply makes a report to the Surgeon-General. There appears to be no adequate examination into the question as to whether the persons need treatment

or whether they are able to pay for treatment. The Surgeon-General exercises no real supervision over the admissions, and the sanitary officer, without investigation, simply exercises his judgement as to sending to the hospital persons making application at his office for free treatment. Therefore, while theoretically there is a contract with the hospital providing for a certain number of patients, and while the hospital undoubtedly receives and cares for a number of patients at least equal to the number required, no measures are taken to protect the Government against imposition on the part of persons who seek free treatment when they are able to pay for hospital services. The annual contract, therefore, is little more than a survival of the proper system as applied to hospital admissions.

"As has been said, the hospital is owned and operated by the Sisters of Charity. *A chapel is maintained in the hospital building, and there is a resident chaplain.* It is probable that the patients seeking Providence Hospital do so with a full knowledge of the facts in the case so far as *the religious connections of the hospital* are concerned; and the reputation of the Sisters of Charity for devotion in hospital work doubtless draws many patients thither.

"From the reports it would appear that all receipts of the hospital are used to *enlarge* and increase the efficiency of the institution. The amount paid per patient per day by the District is not excessive, but on the other hand it undoubtedly fully covers the actual cost of the services rendered; and especially is this the case in view of the fact that the Government has appropriated $60,000 to pay in part for the buildings."

Ever since King Ethelwulph granted the tithe of his kingdom to "the religious" in the year 850, there has been an irrepressible conflict in the schools, in the Parliament, in the courts and on the battlefields of England, respecting religious establishments. Out of this conflict grew the numerous

statutes of mortmain, beginning with the 36th Article of Magna Charta, and ending with the 9th George II, ch. 36, which was in force at the time our Constitution was adopted. A collection of these statutes will be found in Shelford on the Law of Mortmain. I cannot here give extracts from them or from the decisions of the courts expounding them, but must content myself with referring to such works as Highmore on Mortmain, Duke on Charitable Uses, Ambler's Reports, Wilmot's Opinions, 2 Burns' Ecclesiastical Law, and Mr. Wheaton's note to the case of Baptist Association *v.* Hart's Executors, 4 Wheaton, Appendix, p. 3.

My contention is that the power to grant licenses in mortmain was not delegated to Congress, but was denied to it by the first clause of the First Amendment, for the same reasons that impelled the English nation to deny to "religious houses" and "the religious" in general, the right to hold lands without a license from the crown; to wit, the common defense and general welfare, as expressed in the statute De Religiosis, and in 9th Geo. II.

Highmore says that: "The great power that the Pope had acquired in England arose from the numerous monasteries which had been erected in all parts of the island and which not only increased daily in wealth but were with all their territories at his devotion. That it was demonstrated to the King (Edward I.) that the church, never dying, always acquiring, and never alienating—her riches must consequently increase, so that, in process of time, all lands would be in possession of the clergy. * * * * * The King, therefore, proposed, and his parliament adopted, the statute De Religiosis." (Anno 1279. 7 Ed. I.)

That celebrated statute recites: "That it had been of late provided that '*religious*' should not enter into the fees of any (themselves or others) without the license and will of the chief lord of whom such fees were held immediately; but that notwithstanding such provision, such '*religious*'

had entered, as well into their own fees as unto the fees of other men, appropriating and buying them, and sometimes receiving them as gifts of others; whereby the services that were due on account of such fees, and which at the beginning were provided for the defense of the realm, were wrongfully withdrawn." It then enacts, "That no person natural or corporate) religious or other, shall buy or sell, by color of gift, lease or otherwise, or receive by reason of any other title, any lands or tenements, whereby the said lands may come into mortmain."

It appears that Edward I. was the first Christian prince who passed a statute of mortmain and prevented by law the clergy from making new acquisitions of lands, which, by the ecclesiastical canons they were forever prohibited from alienating. The King's object in passing it was chiefly to preserve the military force of the Kingdom. (Highmore on Mortmain, pp. 15, 16, 17.)

By the 9 Geo. II. C. 36. s. I, it is recited: "That gifts or alienations of lands, tenements or heritaments in mortmain are prohibited or restrained by Magna Charta and diverse other *wholesome laws as prejudicial* to and against the common utility."

In Attorney-General *v.* Meyricke (2 Vesey, 44.) one question decided by the court was: whether the mortmain act (9 Geo. II, Ch. 36) prohibited a devise of money to a charity, to be laid out in land. "This" said Lord Hardwicke, "depends on the reason of the law and the construction of its several clauses. The court ought to put such a construction on this act, being a remedial law, as will most effectually repel the mischief and advance the remedy. And, therefore, if by any means the mischief intended to be prevented by the act may happen, the act ought to be construed to prevent it." * * * * * * The intent was to prevent lands coming by any means into hands where they would be unalienable. Therefore the first prohibition is absolute

as to real estate, but leaving men at liberty as to personal. The next circumscribes personal estate and says: 'you shall not give money to be laid out in land' * * * which clause ought to have a liberal construction, to prevent the mischief." See also Highmore on Mortmain, 152-3; Attorney-General *v.* Groves, Amb. 155.

The capacity of private individuals or of corporations to hold lands in this country was not affected by the Revolution. (Society, etc *v.* New Haven, 8 Wheaton 464.)

Upon these several considerations, then, I submit, in conclusion, that the defendant cannot lawfully pay to the Directors of Providence Haspital, or to their principal (The Order of Sisters of Charity), or to any trustee for the use or benefit of either of them, any money belonging to the United States; and this, notwithstanding precedents, or acts of Congress, or contracts made under color of such acts, or warrants drawn by the Secretary of the Treasury, or any other officer of the Government. Because all statutes, contracts, and warrants purporting to authorize such payments are contrary to the manifest intent and meaning of the Constitution.

JOSEPH BRADFIELD, P. P.

In the Supreme Court of the United States.

OCTOBER TERM, 1899.

JOSEPH BRADFIELD, APPELLANT,
v.
ELLIS H. ROBERTS, TREASURER of the United States. } No. 76.

APPEAL FROM THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

BRIEF ON BEHALF OF THE UNITED STATES.

STATEMENT.

The appellant, who appears here *propria persona*, appeals from a decree of the court of appeals of the District of Columbia reversing a decree of the supreme court of the District, by the latter of which decrees a bill in equity, filed by the appellant as "a citizen and taxpayer of the United States and a resident of the District of Columbia," on his own behalf, and that of "all other

citizens of the United States similarly situated," was sustained and the injunction therein prayed against the Treasurer of the United States granted. The complaint was that an alleged agreement (which appears to have dropped out of the case) between the Surgeon-General of the Army and the directors of Providence Hospital of the city of Washington, made by authority of law, and a contract made by the Commissioners of the District with the directors of Providence Hospital (to which the bill imputes a sectarian character) to carry out an appropriation by Congress for the treatment of minor contagious diseases were contrary to the first amendment of the Constitution, namely, that "Congress shall make no law respecting an *establishment of religion* * * * ," and the prayer of the bill was that the defendant, as Treasurer of the United States, be restrained from paying out any money of the United States or of the District of Columbia under the contract in question. The allegation of the bill was that the agreement was "contrary to the article of the Constitution which declares that Congress shall make no law respecting a *religious establishment*."

The District appropriation act of March 3, 1897 (29 Stat., 665, 669), appropriates—

> For two isolating buildings, to be constructed, in the discretion of the Commissioners of the District of Columbia, on the grounds of two hospitals and to be operated as a part of such hospitals, $30,000.

It is to be noted that on the same date an act was passed entitled "An act to prevent the spread of contagious diseases in the District of Columbia" (id., 635).

The contract in question (Rec., p. 4) provides that the District Commissioners—

> Will erect on the grounds of said hospital an isolating building or ward for the treatment of minor contagious diseases, said building or ward to be erected without expense to said hospital, except such as it may elect, but to be paid out of an appropriation for that purpose contained in the District appropriation bill approved March 3, 1897, on plans to be furnished by the said Commissioners and approved by the health officer of the District of Columbia; and that when the said building or ward is fully completed it shall be turned over to the officers of Providence Hospital, subject to the following provisions: First, that two-thirds of the entire capacity of said isolating building or ward shall be reserved for the use of such poor patients as shall be sent there by the Commissioners of the District from time to time through the proper officers. For each such patient said Commissioners and their successors in office are to pay at the rate of $250 per annum for such a time as such patient may be in the hospital, subject to annual appropriations by Congress.
> * * *
>
> And said Providence Hospital agrees to always maintain a neutral zone of 40 feet around such isolating building or ward and grounds connected therewith to which patients of such ward have access.

The omitted portion provides for admission to the isolating ward, on arrangements determined by those in charge thereof, of persons able to pay the Providence Hospital.

Before presenting the more formal initial objections to the bill or entering upon a discussion of the case on the merits, it is deemed proper to state certain preliminary

facts and to suggest to the court whether the appeal herein should not be dismissed.

1. It seems, from open records at the Treasury, that only $3.57 of this appropriation were expended, and that then, by operation of law (1 Supp. R. S., 18), the appropriation lapsed and was repaid into the Treasury. There is, therefore, nothing on which the injunction may operate and rest, and it falls by its own weight. Any later appropriation for the same purpose which may have been made and which may have been expended in whole or in part, though raising the same constitutional question, is not included in these proceedings.

There is therefore only a moot question before the court, which the court will decline to consider. (*Bartemeyer* v. *Iowa*, 18 Wall., 129; *Chicago and Vincennes R. R.* v. *Fosdick*, 106 U. S., 47, 84; *San Mateo Co.* v. *Southern Pac. R. R.*, 116 U. S., 138; *Kimball* v. *Kimball*, 174 U. S., 158, 163.)

2. The constitutional prohibition forbids an "*establishment of religion;*" that is, a state church. Whatever further is included in withholding the right to "make laws respecting an *establishment of religion*" is not of moment here, for the farthest stretch of the meaning of language might make Providence Hospital a *religious establishment* (though not surely in true intent), but not by any possibility an *establishment of religion*. There being therefore no substantial question before the court, it is suggested that the case is frivolous and falls within the concluding provision of Rule VI, section 5, and should be dismissed.

The assignments of error (not in the record) appear at pages 1–8 of the appellant's brief; and the opinion of the supreme court of the District (which was reversed), also not in the record, will be found in 26 Washington Law Rep., 242.

ARGUMENT.

I.

Respecting the brief for appellant.

This is taken up out of the natural order to notice some features which are not strictly part of the argument, but to which we desire to call the court's attention.

The appellant seems to see in this beneficent contract, made pursuant to an appropriation to carry out the Congressional scheme of health protection in the District, a subtle and dangerous encroachment of ecclesiastical influence (Brief, p. 27), in obedience to which a law, though fair on its face and impartial in appearance, will be administered by public authority with an evil eye and an unequal hand (citing a decision of the court in a Chinese exclusion case, p. 16), and the principles of the underlying social compact be overthrown and security for personal and religious liberty and private property be taken away (pp. 10, 12). He finds in the erection, under the act, of the proposed building upon land of the hospital a payment in aid of an institution under sectarian control and a flagrant violation of the Constitution, because it is for the benefit of priestcraft and in support of a religious worship (id. *et passim*). He seeks in the Quebec act (by which Great Britain granted religious

toleration and freedom and confirmed certain ecclesiastical rights in Canada), a potent, indeed the immediate, cause of the American Revolution (p. 21), picturing the colonial horror and dismay that it created [in the very different state of religious feeling in those times] as "an atrocious infraction of the rights of Englishmen" (pp. 18–24). He investigates the theological dogma of supererogation, and therefrom draws a conclusion that taxes embraced in the appropriation for the isolating ward of the hospital would be used for the enrichment of church authorities and the encouragement of crime (p. 39). State court judgments, holding that under special and peculiar constitutional and statutory provisions public funds may not be paid out in aid of sectarian schools, even if a *quid pro quo* is rendered, he finds generally are in accord with the soundest philosophy, and cites Plato to show that our guardians should erect barriers in the matter of education, for there it is that superstition insinuates itself in the guise of amusement or religion, professing to do no mischief. (P. 47.)

An assignment of error (No. 8, plaintiff's brief, p. 7) finds error in the failure of the court below "to construe the *mortmain clause of the Federal Constitution* in the light of the English laws of mortmain and charitable uses whose principles it embodies;" and the brief contends that the act of Congress and the contract of the Commissioners are in effect a license in mortmain, and that (p. 57) the power to grant such was not delegated to Congress, but was denied by the first amendment for the same reasons that impelled England to deny to "religious houses" the right to hold lands without license from the

Crown; that is, the common defense and general welfare as expressed in the statute *de religiosis* of Edward I.

Now, the authorities which appellant cites (p. 58) show (as all authorities do) that the English statutes of mortmain were feudal in their origin, motive, and purpose, and designed to prevent abuses some centuries ago by which the *clergy* in monastic times made new and continued acquisition of lands. The intent was to prevent lands from going into the hands of *religious houses* and other hands where they would be inalienable. It may be noted here that the Pennsylvania doctrine is that the statutes of mortmain have been extended to Pennsylvania only so far as they prohibit any dedication of property to *superstitious* uses and grants to corporations without a statutory license. (*Methodist Church* v. *Remington et al.*, 1 Watts, 218.)

II.

Respecting formal objections to granting the relief prayed.

These are in addition to the similar objections noted in the statement. They will be considered briefly because the court of appeals, while pointing out their force and showing, indeed, that they were fatal to the bill, deemed it judicious to take the case upon the merits; and this court may be of the same opinion. The Government has no strenuous objection to interpose. We therefore merely state and submit these objections to the judgment of the court.

1. The complainant sues as a citizen and taxpayer, and yet *in forma pauperis*.

2. Inasmuch as the appropriation was for $30,000, to be expended on isolating wards at two hospitals, $15,000 is the real amount involved at the Providence Hospital, and the complainant's share of that burden as one of the taxpayers of the United States is probably less than 1 mill.

The supreme court of the District of Columbia, in the case of *Grant* v. *Cooke* (7 D. C., pp. 203–4), says:

> No special injury peculiar to these complainants is stated in the bill. The only grievance they can suffer consists in the probability, if not certainty, of increased taxation, which, however, will fall to the experience of every taxpayer in the District. No private damage is pretended. Now, no doctrine is better settled than that a bill to restrain the enforcement of a public law can not be maintained unless the plaintiff is threatened with an injury peculiar to himself, and the special grievance of which he complains must not only be possible and imminent, but be clearly set up. [Citing *Miller* v. *Grundy*, 13 Mich., 550; *Hale* v. *Cushing*, 6 Mich., 425; *Roosevelt* v. *Drake*, 23 N. Y., 318; *Dows* v. *Chicago*, 11 Wall., 108.]

See also the case of *Doolittle* v. *Supervisors of Broome Co.* (18 N. Y., 155), by which it is denied that a citizen as a voter and taxpayer may enjoin public authorities from the execution of a law which the complainant conceives to be passed without constitutional authority.

3. The bill is defective for lack of proper parties, in that it seeks to set aside a contract between parties who are not parties to this suit.

4. The bill may not be sustained, because it seeks to enjoin a United States officer from exercising a power which

is executive and may be regarded as discretionery *sub modo* and not merely ministerial, and from carrying out a law of the United States. (*Marbury* v. *Madison*, 1 Cr., 137; *United States ex rel* v. *Lamont*, 155 U. S., 333.) The courts have sustained such injunctions as the present one against municipal corporations (*Crampton* v. *Zabriskie*, 101 U. S., 601), but have not extended them to the National or State Governments, holding that neither the executive nor the legislature may be restrained, although their acts when performed are, in proper cases, subject to judicial cognizance. (*Mississippi* v. *Johnson*, 4 Wall., 475; *State of Georgia* v. *Stanton*, 6 Wall., 50). And the doctrine that the courts will not interfere with the performance by an executive officer of his ordinary duties is stated in *Gaines* v. *Thompson* (7 Wall., 352) to be as applicable to the writ of injunction as it is to the writ of mandamus.

5. Considering, perhaps, that the right to the writ may be allowed irrespective of formal defects and preliminary objections in a case raising clearly and strongly a grave constitutional objection, we say that the complainant can not thus make a case in order to try the validity of an act of Congress, although after a proper case is made the judiciary may determine the rights of the respective parties, and that to grant sufficient title in the complainant to file this bill is to say that he may enjoin an officer of the United States from paying over money of the United States under any appropriation whatever, and from executing any law which he conceives to be unconstitutional; so that every act of Congress immediately upon its passage may be called in question by a bill in

equity to enjoin the public authorities from executing it. In fact, the doctrine seems to be well settled that a public law can in no way be declared null and void by a bill filed against the Executive Department asking that it be enjoined from carrying it out.

III.

Respecting the constitutional provision, the statutes, and the contract.

But if the court, affirming the view of the court below, desire, notwithstanding the preliminary objections, to take the case on the merits, then, relying on the exhaustive, cogent, and learned opinion of the court below (Rec., pp. 2–22), in place of an extended argument, we submit:

1. Regarding the bill, then, as if in reality directed against the District of Columbia by a plaintiff entitled to sue and to prevent a damage irremediable at law, the Providence Hospital, a private corporation, duly incorporated by act of Congress of April 8, 1864 (13 Stat., 43), is not even a *religious establishment*. The bill alleges that "it is composed of members of a monastic order or sisterhood of the Roman Catholic Church, and is conducted under the auspices of said church;" but the incorporators are named as private individuals, without any clerical prefix (if such belong to them), and the charter does not contain a word of religious import. It gives to this corporation the ordinary corporate powers—the right to sue, to have a seal, to hold and dispose of property (which seems to remove the argument on the statutes of mortmain), to make all laws and regulations

consistent with law, and, by clear and necessary inference, at least, the power to contract—all to be exercised for the purpose of opening and keeping a hospital for the care of sick and invalid persons. Surely, under these circumstances, religious liberty is truly concerned to see that the religious opinions of the members of the corporation are not the subject of inquiry. (*Watson* v. *Jones*, 13 Wall., 679, 724, 725; opinion of court below, Rec., p. 14.) This is a corporate charity, in the modern sense, founded upon humane and beneficent purposes, and rightly fostered and sustained for the general good by the municipality in view of the Government powers as to health and police, but it is not a charity or a charitable or religious use for pious purposes in the ancient sense. It is in no true meaning of language a religious establishment. Why, then, under the power possessed by the directors and granted to the Commissioners by the appropriation act, should not this contract for furthering the laudable and necessary scheme of health protection for the District be made? It is a well-known fact that Congress has incorporated in the District of Columbia many charitable, educational, and religious societies, some expressly under church auspices, and has made grants to such (4 Stat., 603; 6 id., 538; report of Joint Select Committee on Charities of the District of Columbia, made March 1, 1898); and it is not to be denied that Congress in District legislation possesses the combined powers of a general government and of a State, and that the necessary care of the public health and the maintenance of public charities are within those powers; nor is it to be denied that it has been the practice of Congress

for many years to make provision for the care of the sick and for the maintenance and training of various classes of defectives, and for other objects of charity and reform, through appropriations for private institutions in consideration of service rendered and upon special contract.

2. Even if Providence Hospital were a *religious establishment*, it certainly is not an *establishment of religion*, and it is against laws respecting an establishment of religion that the constitutional prohibition is directed.

President Madison, in a message dated February 21, 1811, vetoing an act for the incorporation of a Protestant Episcopal church in Alexandria, then in the District of Columbia, did so because, in his opinion, the church was to a certain extent a *religious establishment* by law, and because a legal force and sanction would be given to certain articles in its constitution. A few days later he vetoed an act for the relief of a Baptist church in the Mississippi territory, because the bill provided a principle and precedent "contrary to the article of the Constitution which declares that 'Congress shall make no law respecting a religious establishment.'" (Richardson's Messages of the Presidents, vol. 1, pp. 489, 490.) It is to be noted that President Madison in both messages erroneously quoted the language of the amendment. While the opinion of President Madison is entitled to the greatest respect, it appears that it has not been taken as a precedent (quite apart from the strange mistake in quotation), because, as above shown, Congress has customarily granted charters to charitable and religious societies, and cases involving grants to such societies have passed the Supreme Court without the validity of such grants

being challenged. (*B. & P. R. R. Co.* v. *Fifth Baptist Church*, 137 U. S., 568; *Missionary Society* v. *Dalles*, 107 U. S., 336, 339; *Catholic Bishop of Nesqually* v. *Gibbon*, 158 U. S., 155, 171.) Justice Story also, in the case of *Terrett* v. *Taylor* (9 Cr., 43, 47, 49, 51), uses the term *religious establishment* in reference to a church, but not in connection with the amendment to the Constitution, and holds that it was competent for the people of Virginia to disestablish the colonial church and withhold from it any support by public taxation, but also holds that it was competent for the legislature to incorporate the church and confirm its title, and that such a legislative grant is irrevocable.

An establishment of religion means a State church, an ecclesiastical system inaugurated and supported by the State, and in such a case religious liberty is impaired, according to American views and policy, because the citizen is taxed to support the State form of worship, and the preference is given to that form. Without attempting to define the further scope of the prohibitory words, the inhibition was intended to secure nothing more than complete religious liberty to all persons, the separation of church and state, and the prohibition of any preference by law in favor of any one religious persuasion or mode of worship. (Cooley's Const. Lim., 6th ed., p. 575; 2 Story Const., sec. 1871 et seq.; 2 Kent's Com., 34, 35, and auth. cit.) The end to be sought is the end of equality before the State and the law, which is dwelt upon in the opinion of Justice Story, *supra*, who shows very clearly that the grant of corporate powers and the confirmation of title to property is not justly to be deemed

as restraining the free exercise of religion or denying that equality. And Chief Justice Waite, in the case of *Reynolds* v. *United States* (98 U. S., 145, 162, 164), approves the following statement of Mr. Jefferson "as an authoritative declaration of the scope and effect of the amendment thus secured:"

> I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should "make no law respecting an establishment of religion or prohibiting the free exercise thereof," thus building a *wall of separation between church and State.*

As to certain decisions of State courts, discussed below and arising upon peculiar and different constitutional or statutory provisions of law, the court below did not approve thereof as applicable to this case, or, rather, found that there was no necessary antagonism between them and the conclusion reached herein below. We respectfully submit that the court may properly affirm that view upon examination of those cases, and whether or not they or all of them were properly decided is not a question at issue here. The gist of them is that special clauses of law prohibiting donations to a church or appropriations in aid of any church or sectarian purpose embrace all appropriations and payments, whether made for a consideration or not.

3. The appropriation act in question (29 Stat., 683) contains a clause which declares it to be the policy of the Government of the United States to make no appropriation for the purposes of aiding any church or institution under sectarian or ecclesiastical control, by which it was

enacted that from June 30, 1898, no money appropriated for charitable purposes in the District of Columbia should be paid to any church or to any institution which is under such control. The appropriations under the act of March 3, 1897, are limited to the fiscal year ending June 30, 1898. The new policy is declared to take effect and be in force *from June 30, 1898*. The appellant relies greatly upon this provision as showing a declaration of departure in public policy which limits and controls the discretion of the District Commissioners in the matter of the contract under consideration, and this view was approved by the learned justice in the supreme court of the District. But how is it possible to hold that an act, the purpose of which will have been accomplished on June 30, 1898, is to be restrained by a clause which is expressly declared not to come into force and operation until after that date? And how can it be considered, either, that the provision influences appropriations that will be exhausted before it takes effect, or that it can bind the succeeding Congress, which enacted the appropriation bill for the year beginning July 1, 1898? It appears to have no legal force and meaning, except as a declaration of an abstract view of public policy not affecting the operation of the act of which it was a part, and not properly controlling expenditures under the appropriations of later Congresses.

We therefore contend that there is no valid objection to the power to contract as exercised by the directors of the hospital and the Commissioners of the District, and that a law authorizing a contract without discrimination

or preference, or one made under general discretion reposed in authorized agents, for the rendering of service in caring for the sick and preventing contagion, with a corporation that may be under the control of a church should not be declared void as a law or an act authorized by law respecting an establishment of religion; and consequently we respectfully submit that the decree of the court of appeals of the District of Columbia should be affirmed, and the cause remanded to the supreme court of the District of Columbia, with directions to dismiss the bill.

JOHN W. GRIGGS,
Attorney-General.
HENRY M. HOYT,
Assistant Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1899.

JOSEPH BRADFIELD, APPELLANT,
v.
ELLIS H. ROBERTS, TREASURER OF the United States. } No. 76.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

SUPPLEMENTAL BRIEF ON BEHALF OF THE UNITED STATES.

It is likely that the appellant will emphasize in his oral argument the contention that the States never intended to delegate to Congress the right to take money from any citizen to be applied in the propagation of opinions which he disbelieved. The answer to that line of argument is that by no conceivable mode of reasoning can the work of this hospital be considered as the propagation of religious opinions.

So, too, we may say again, and from a somewhat different point of view, that the giving of money for

charities, to be laid out possibly in land, is contrary to the statutes of mortmain. But the reply to that is that the entire spirit of the statutes of mortmain kept in view ecclesiastical charities; was, after all, the spirit of the English law rather than of the American law, wherein the doctrine has but a limited application, and viewed the controlling and predominant ecclesiasticism of the charities with alarm rather than the charity itself. Consequently, the argument which may be drawn from the view of the court in the Dred Scott Case, that the only mode for amending the Constitution is the mode prescribed by the instrument itself, and that no tribunal could properly interject an amendment by interpretation, does not at all apply to this case; and perhaps it is unfortunate for the appellant to suggest that question upon the facts in the Dred Scott Case, which by after events fell away from the position of giving any substantial support to the principle announced.

It is merely repeating the Government contention in another form to say that the appropriation of public money for the use and support of such an institution, a consideration being given and a very important public function being thereby furthered, is in no sense a restraint upon the freedom of inquiry and private judgment nor in violation of natural rights, and such an institution as the Providence Hospital is entirely outside the definition of an establishment of religion.

President Madison, before he was President, drew a memorial and remonstrance that was presented to the general assembly of Virginia in 1785 protesting against the passage of a bill to establish a provision for teachers

of the Christian religion. This well illustrates the very point for which we are contending. The proposal was to set up an establishment of religion, or what might become an establishment of religion. If established, the system would practically deny equality of religious rights, would prefer one plan or form of teaching and doctrine to others, and would be clearly contrary to the American notions of civil and religious liberty. The remonstrance was therefore proper and sound. It does not affect the question now before the court in the least.

Finally, the appellant may argue that not only superstitious and ecclesiastical charitable use is forbidden, but also a mistaken one, and upon this proposition he may cite certain legislation and cases affecting the Mormon Church in which the *cy pres* doctrine was applied. This, again, will convict him of failing to appreciate the logical distinction which we submit; for the Mormon Church cases show that the Mormon system was "mistaken" because plainly contrary to law and against religion and morals as well, as those subjects are viewed by legislatures and all right-minded people of the country, both in the past and at present. The *cy pres* doctrine might properly be suggested in reference to them—as by the act of Congress passed in 1887 (1 Supp. R. S., 571)—viz, that the object of the incorporation of the church being mistaken and illegal, its property, upon principles applicable to property devoted to forbidden religious and charitable uses, devolved to the United States, and was subject to be disposed of according to those principles.

The notion of the *cypres* doctrine as thus suggested by the appellant immediately throws light upon the present

case. How could the incorporation of this hospital, or the use of the Government money on the contract with it for the purposes shown, be regarded as even "mistaken?" And conceding that it might be so regarded for the purpose of argument, what substituted object for its work could be indicated, as more clearly legal, which could fairly be compared with the work it is doing in value and importance to the public? No better object, surely, and, we contend, none so good.

Respectfully submitted.

HENRY M. HOYT,
Assistant Attorney-General.

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BRADFIELD *v.* ROBERTS.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 76. Argued October 27, 1899. — Decided December 4, 1899.

The Providence Hospital of the city of Washington was incorporated by the act of Congress of August 7, 1864, c. 50, 13 Stat. 43, which gave to it "full power and all the rights of opening and keeping a hospital in the city of Washington for the care of such sick and invalid persons as may place themselves under the treatment and care of the said corporation." By the act of March 3, 1897, c. 387, 29 Stat. 665, making appropriations for the District of Columbia, an appropriation of $30,000 was made for two isolating buildings, to be constructed in the discretion of the Commissioners of the District, on the grounds of two hospitals, and to be operated as a part of such hospitals. Under that authority the Commissioners made an agreement with the Providence Hospital, which was a private hospital, in charge of sisters of the Roman Catholic Church, for the construction of an isolating building or ward on the hospital grounds, and for the receipt therein of poor patients sent there by the Commissioners, and for payments by the District on that account to the hospital. *Held*, that the agreement was one which it was within the power of the Commissioners to make; and that it did not conflict with the provision in Article I of the Amendments to the Constitution that "Congress shall make no law respecting an establishment of religion."

Statement of the Case.

THIS was a suit in equity, brought by the appellant to enjoin the defendant from paying any moneys to the directors of Providence Hospital in the city of Washington, under an agreement entered into between the Commissioners of the District of Columbia and the directors of the hospital, by virtue of the authority of an act of Congress, because of the alleged invalidity of the agreement for the reasons stated in the bill of complaint. In that bill complainant represents that he is a citizen and taxpayer of the United States and a resident of the District of Columbia, that the defendant is the Treasurer of the United States, and the object of the suit is to enjoin him from paying to or on account of Providence Hospital, in the city of Washington, District of Columbia, any moneys belonging to the United States, by virtue of a contract between the Surgeon General of the Army and the directors of that hospital, or by virtue of an agreement between the Commissioners of the District of Columbia and such directors, under the authority of an appropriation contained in the sundry civil appropriation bill for the District of Columbia, approved June 4, 1897.

Complainant further alleged in his bill:

"That the said Providence Hospital is a private eleemosynary corporation, and that to the best of the complainant's knowledge and belief it is composed of members of a monastic order or sisterhood of the Roman Catholic Church, and is conducted under the auspices of said church; that the title to its property is vested in the 'Sisters of Charity of Emmitsburg, Maryland;' that it was incorporated by a special act of Congress approved April 8, 1864, whereby, in addition to the usual powers of bodies corporate and politic, it was invested specially with 'full power and all the rights of opening and keeping a hospital in the city of Washington for the care of such sick and invalid persons as may place themselves under the treatment and care of said corporation.'

"That in view of the sectarian character of said Providence Hospital and the specific and limited object of its creation, the said contract between the same and the Surgeon General of the Army and also the said agreement between the same and

the Commissioners of the District of Columbia are unauthorized by law, and, moreover, involve a principle and a precedent for the appropriation of the funds of the United States for the use and support of religious societies, contrary to the article of the Constitution which declares that Congress shall make no law respecting a religious establishment, and also a precedent for giving to religious societies a legal agency in carrying into effect a public and civil duty which would, if once established, speedily obliterate the essential distinction between civil and religious functions.

"That the complainant and all other citizens and taxpayers of the United States are injured by reason of the said contract and the said agreement, in virtue whereof the public funds are being used and pledged for the advancement and support of a private and sectarian corporation, and that they will suffer irreparable damage if the same are allowed to be carried into full effect by means of payments made through or by the said defendant out of the Treasury of the United States, contrary to the Constitution and declared policy of the Government."

The agreement above mentioned, between the Commissioners of the District of Columbia and the directors of Providence Hospital, is annexed to the bill, and is as follows:

"Articles of agreement entered into this sixteenth day of August, in the year of our Lord one thousand eight hundred and ninety-seven, by and between the Commissioners of the District of Columbia and the directors of Providence Hospital, a body corporate in said District, whereby it is agreed on the part of the Commissioners of the District of Columbia —

"That they will erect on the grounds of said hospital an isolating building or ward for the treatment of minor contagious diseases, said building or ward to be erected without expense to said hospital, except such as it may elect, but to be paid out of an appropriation for that purpose contained in the District appropriation bill approved March 3, 1897, on plans to be furnished by the said Commissioners, and approved by the health officer of the District of Columbia, and that when the said building or ward is fully completed it shall be turned

over to the officers of Providence Hospital, subject to the following provisions:

"First. That two thirds of the entire capacity of said isolating building or ward shall be reserved for the use of such poor patients as shall be sent there by the Commissioners of the District from time to time through the proper officers. For each such patient said Commissioners and their successors in office are to pay at the rate of two hundred and fifty dollars ($250) per annum, for such a time as such patient may be in the hospital, subject to annual appropriations by Congress.

"Second. That persons able to pay for treatment may make such arrangements for entering the said building or ward as shall be determined by those in charge thereof, and such persons will pay the said Providence Hospital reasonable compensation for such treatment, to be fixed by the hospital authorities, but such persons shall have the privilege of selecting their own physicians and nurses, and in case physicians and nurses are selected other than those assigned by the hospital, it shall be at the expense of the patient making the request.

"And said Providence Hospital agrees to always maintain a neutral zone of forty (40) feet around said isolating building or ward and grounds connected therewith to which patients of said ward have access.

"As witness the signatures and seals of John W. Ross, John B. Wight and Edward Burr, acting Commissioners of the District of Columbia, and the corporate seal of the said The Directors of Providence Hospital and the signature of president thereof, this sixteenth day of August, A.D. 1897."

The contract, if any, between the directors and the Surgeon General of the Army is not set forth in the bill, and the contents or conditions thereof do not in any way appear.

The defendant demurred to the bill on the ground that the complainant had not in and by his bill shown any right or title to maintain the same; also upon the further ground that the complainant had not stated such a case as entitled him to the relief thereby prayed or any relief as against the defendant.

Complainant joined issue upon the demurrer, and at a term of the Supreme Court of the District of Columbia the demurrer was overruled and the injunction granted as prayed for. 26 Wash. Law Rep. 84. Upon appeal to the Court of Appeals of the District the judgment was reversed, and the case remanded to the Supreme Court, with directions to dismiss the bill. 12 App. D. C. 453. Whereupon the complainant appealed to this court.

Mr. Joseph Bradfield, appellant, in person for appellant.

Mr. Assistant Attorney General Hoyt for appellee. *Mr. Attorney General* was on his brief.

Mr. Justice Peckham, after stating the facts, delivered the opinion of the court.

Passing the various objections made to the maintenance of this suit on account of an alleged defect of parties, and also in regard to the character in which the complainant sues, merely that of a citizen and taxpayer of the United States and a resident of the District of Columbia, we come to the main question as to the validity of the agreement between the Commissioners of the District and the directors of the hospital, founded upon the appropriation contained in the act of Congress, the contention being that the agreement if carried out would result in an appropriation by Congress of money to a religious society, thereby violating the constitutional provision which forbids Congress from passing any law respecting an establishment of religion. Art. I of the Amendments to Constitution.

The appropriation is to be found in the general appropriation act for the government of the District of Columbia, approved March 3, 1897, c. 387, 29 Stat. 665, 679. It reads: "For two isolating buildings, to be constructed, in the discretion of the Commissioners of the District of Columbia, on the grounds of two hospitals, and to be operated as a part of such hospitals, thirty thousand dollars." Acting under the

authority of this appropriation the Commissioners entered into the agreement in question.

As the bill alleges that Providence Hospital was incorporated by an act of Congress, approved April 8, 1864, c. 50, 13 Stat. 43, and assumes to give some of its provisions, the act thus referred to is substantially made a part of the bill, and it is therefore set forth in the margin.[1]

The act shows that the individuals named therein and their successors in office were incorporated under the name of "The Directors of Providence Hospital," with power to

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[1] An Act to incorporate Providence Hospital of the City of Washington, District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Lucy Gwynn, Teresa Angela Costello, Sarah McDonald, Mary E. Spalding and Mary Carroll, and their successors in office, are hereby made, declared and constituted a corporation and body politic, in law and in fact, under the name and style of the directors of Providence Hospital, and by that name they shall be and are hereby made capable in law to sue and be sued, to plead and be impleaded, in any court within the county of Washington, in the District of Columbia; to have and use a common seal, and to alter or amend the same at pleasure; to have, purchase, receive, possess and enjoy any estate in lands, tenements, annuities, goods, chattels, moneys or effects, and to grant, devise or dispose of the same in such manner as they may deem most for the interest of the hospital: *Provided*, That the real estate held by said corporation shall not exceed in value the sum of one hundred and fifty thousand dollars.

SEC. 2. *And be it further enacted*, That the said corporation and body politic shall have full power to appoint from their own body a president and such other officers as they may deem necessary for the purposes of their creation; and in case of the death, resignation or refusal to serve, of any of their number, the remaining members shall elect and appoint other persons in lieu of those whose places may have been vacated; and the said corporation shall have full power and all the rights of opening and keeping a hospital in the city of Washington for the care of such sick and invalid persons as may place themselves under the treatment and care of the said corporation.

SEC. 3. *And be it further enacted*, That the said corporation shall also have and enjoy full power and authority to make such by-laws, rules and regulations, as may be necessary for the general accomplishment of the objects of said hospital: *Provided*, That they be not inconsistent with the laws in force in the District of Columbia: *And provided, further*, That this act shall be liable to be amended, altered or repealed, at the pleasure of Congress.

receive, hold and convey personal and real property, as provided in its first section. By the second section the corporation was granted "full power and all the rights of opening and keeping a hospital in the city of Washington for the care of such sick and invalid persons as may place themselves under the treatment and care of the said corporation." The third section gave it full power to make such by-laws, rules and regulations that might be necessary for the general accomplishment of the objects of the hospital, not inconsistent with the laws in force in the District of Columbia. Nothing is said about religion or about the religious faith of the incorporators of this institution in the act of incorporation. It is simply the ordinary case of the incorporation of a hospital for the purposes for which such an institution is generally conducted. It is claimed that the allegation in the complainant's bill, that the said "Providence Hospital is a private eleemosynary corporation, and that to the best of complainant's knowledge and belief it is composed of members of a monastic order or sisterhood of the Roman Catholic Church, and is conducted under the auspices of said church; that the title to its property is vested in the Sisters of Charity of Emmitsburg, Maryland," renders the agreement void for the reason therein stated, which is that Congress has no power to make "a law respecting a religious establishment," a phrase which is not synonymous with that used in the Constitution, which prohibits the passage of a law "respecting an establishment of religion."

If we were to assume, for the purpose of this question only, that under this appropriation an agreement with a religious corporation of the tenor of this agreement would be invalid, as resulting indirectly in the passage of an act respecting an establishment of religion, we are unable to see that the complainant in his bill shows that the corporation is of the kind described, but on the contrary he has clearly shown that it is not.

The above-mentioned allegations in the complainant's bill do not change the legal character of the corporation or render it on that account a religious or sectarian body. Assuming

that the hospital is a private eleemosynary corporation, the fact that its members, according to the belief of the complainant, are members of a monastic order or sisterhood of the Roman Catholic Church, and the further fact that the hospital is conducted under the auspices of said church, are wholly immaterial, as is also the allegation regarding the title to its property. The statute provides as to its property and makes no provision for its being held by any one other than itself. The facts above stated do not in the least change the legal character of the hospital, or make a religious corporation out of a purely secular one as constituted by the law of its being. Whether the individuals who compose the corporation under its charter happen to be all Roman Catholics, or all Methodists, or Presbyterians, or Unitarians, or members of any other religious organization, or of no organization at all, is of not the slightest consequence with reference to the law of its incorporation, nor can the individual beliefs upon religious matters of the various incorporators be inquired into. Nor is it material that the hospital may be conducted under the auspices of the Roman Catholic Church. To be conducted under the auspices is to be conducted under the influence or patronage of that church. The meaning of the allegation is that the church exercises great and perhaps controlling influence over the management of the hospital. It must, however, be managed pursuant to the law of its being. That the influence of any particular church may be powerful over the members of a non-sectarian and secular corporation, incorporated for a certain defined purpose and with clearly stated powers, is surely not sufficient to convert such a corporation into a religious or sectarian body. That fact does not alter the legal character of the corporation, which is incorporated under an act of Congress, and its powers, duties and character are to be solely measured by the charter under which it alone has any legal existence. There is no allegation that its hospital work is confined to members of that church or that in its management the hospital has been conducted so as to violate its charter in the smallest degree. It is simply the case of a secular corporation being managed by people

who hold to the doctrines of the Roman Catholic Church, but who nevertheless are managing the corporation according to the law under which it exists. The charter itself does not limit the exercise of its corporate powers to the members of any particular religious denomination, but on the contrary those powers are to be exercised in favor of any one seeking the ministrations of that kind of an institution. All that can be said of the corporation itself is that it has been incorporated by an act of Congress, and for its legal powers and duties that act must be exclusively referred to. As stated in the opinion of the Court of Appeals, this corporation "is not declared the trustee of any church or religious society. Its property is to be acquired in its own name and for its own purposes; that property and its business are to be managed in its own way, subject to no visitation, supervision or control by any ecclesiastical authority whatever, but only to that of the Government which created it. In respect then of its creation, organization, management and ownership of property it is an ordinary private corporation whose rights are determinable by the law of the land, and the religious opinions of whose members are not subjects of inquiry."

It is not contended that Congress has no power in the District to appropriate money for the purpose expressed in the appropriation, and it is not doubted that it has power to authorize the Commissioners of the District of Columbia to enter into a contract with the trustees of an incorporated hospital for the purposes mentioned in the agreement in this case, and the only objection set up is the alleged "sectarian character of the hospital and the specific and limited object of its creation."

The other allegations in complainant's bill are simply statements of his opinion in regard to the results necessarily flowing from the appropriation in question when connected with the agreement mentioned.

The act of Congress, however, shows there is nothing sectarian in the corporation, and "the specific and limited object of its creation" is the opening and keeping a hospital in the city of Washington for the care of such sick and invalid persons as

may place themselves under the treatment and care of the corporation. To make the agreement was within the discretion of the Commissioners, and was a fair exercise thereof.

The right reserved in the third section of the charter to amend, alter or repeal the act leaves full power in Congress to remedy any abuse of the charter privileges.

Without adverting to any other objections to the maintenance of this suit, it is plain that complainant wholly fails to set forth a cause of action, and the bill was properly dismissed by the Court of Appeals, and its decree will, therefore, be

Affirmed.